

EXHIBIT 32

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEW JERSEY

3 -----

4 IN RE: JOHNSON & JOHNSON MDL NO.:

5 TALCUM POWDER PRODUCTS 16-2738 (FLW) (LGH)

6 MARKETING, SALES PRACTICES,

7 AND PRODUCTS LIABILITY

8 LITIGATION

9 -----

10

11 EXPERT DEPOSITION OF

12 WILLIAM M. SAGE, MD, JD

13

14 Thursday, September 23, 2021

15 8:13 a.m.

16

17 Washington, DC 20006

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19

20

21 Reported by:

22 Denise Dobner Vickery NCRA Registered Merit

23 Reporter, NCRA Certified Realtime Reporter.

24 Notary Public

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| <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 Thursday, September 23, 2021</p> <p>9 8:13 a.m.</p> <p>10</p> <p>11 Expert Deposition of WILLIAM M. SAGE, MD, JD,</p> <p>12 held at the offices of:</p> <p>13</p> <p>14 ASHCRAFT & GEREL LLP</p> <p>15 1825 K Street NW</p> <p>16 Suite 700</p> <p>17 Washington, DC 20006</p> <p>18</p> <p>19</p> <p>20 Pursuant to notice, before Denise Dobner</p> <p>21 Vickery, Certified Realtime Reporter, Registered</p> <p>22 Merit Reporter, and Notary Public in and for the</p> <p>23 District of Columbia.</p> <p>24</p> | <p>Page 2</p> <p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 For Plaintiffs:</p> <p>4 LEVIN PAPATONIO RAFFERTY PROCTOR</p> <p>5 BUCHANAN O'BRIEN BARR & MOUGEY, PA</p> <p>6 BY: CHRISTOPHER V. TISI, ESQ.</p> <p>7 316 South Baylen Street, Suite 600</p> <p>8 Pensacola, FL 32502-5996</p> <p>9 850.435.7176</p> <p>10 ctisi@levinlaw.com</p> <p>11</p> <p>12</p> <p>13 For Defendants Johnson & Johnson and Johnson &</p> <p>14 Johnson Consumer, Inc.:</p> <p>15 SHOOK HARDY & BACON LLP</p> <p>16 BY: MARK C. HEGARTY, ESQ.</p> <p>17 2555 Grand Blvd.</p> <p>18 Kansas City, MO 64108</p> <p>19 816.474.6550</p> <p>20 mhegarty@shb.com</p> <p>21</p> <p>22 Also Present Remotely:</p> <p>23 KATE STONE, ESQ., Faegre Drinker</p> <p>24 Biddle & Reath LLP</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>1 APPEARANCES:</p> <p>2</p> <p>3 For MDL Plaintiffs:</p> <p>4 BEASLEY ALLEN LAW FIRM</p> <p>5 BY: DR. MARGARET M. THOMPSON, ESQ.</p> <p>6 218 Commerce Street</p> <p>7 Montgomery, AL 36104</p> <p>8 1.800.898.2034</p> <p>9 margaret.thompson@beasleyallen.com</p> <p>10</p> <p>11</p> <p>12</p> <p>13 For MDL Plaintiffs:</p> <p>14 ASHCRAFT & GEREL LLP</p> <p>15 BY: MICHELLE A. PARFITT, ESQ.</p> <p>16 JAMES F. GREEN, ESQ.</p> <p>17 1825 K Street NW, Suite 700</p> <p>18 Washington, DC 20006</p> <p>19 202.759.7648</p> <p>20 mparfitt@ashcraftlaw.com</p> <p>21 jgreen@ashcraftlaw.com</p> <p>22</p> <p>23</p> <p>24</p> | <p>Page 3</p> <table border="0"> <tr> <td style="width: 70%;">1 INDEX</td> <td style="width: 30%;">PAGE</td> </tr> <tr> <td>2 EXAMINATION OF WILLIAM M. SAGE, MD, JD</td> <td>PAGE</td> </tr> <tr> <td>3 BY MR. HEGARTY</td> <td>8</td> </tr> <tr> <td>4 AFTERNOON SESSION</td> <td>213</td> </tr> <tr> <td>5 DR. THOMPSON</td> <td>426</td> </tr> <tr> <td>6</td> <td></td> </tr> <tr> <td>7 SAGE DEPOSITION EXHIBITS</td> <td></td> </tr> <tr> <td>8 NUMBER DESCRIPTION</td> <td>PAGE</td> </tr> <tr> <td>9 Exhibit 1 Sage Invoice dated 8/10/2021</td> <td>11</td> </tr> <tr> <td>10 Exhibit 2 Canada Screening Assessment</td> <td>52</td> </tr> <tr> <td>11 Talc, April 2021, Pages 1-65</td> <td></td> </tr> <tr> <td>12 Exhibit 3 Sage Curriculum Vitae</td> <td>58</td> </tr> <tr> <td>13 Exhibit 4 7/2/2021 Expert Report of</td> <td>75</td> </tr> <tr> <td>14 William M. Sage, MD, JD</td> <td></td> </tr> <tr> <td>15 Exhibit 5 Literature from Expert Report</td> <td>82</td> </tr> <tr> <td>16 Pages 1-18</td> <td></td> </tr> <tr> <td>17 Exhibit 6 Second Amended Notice of Oral</td> <td>96</td> </tr> <tr> <td>18 Deposition of William M. Sage, MD, JD</td> <td></td> </tr> <tr> <td>19 and Duces Tecum,</td> <td></td> </tr> <tr> <td>20 Exhibit 7 HHS/Musser Letter dated 4/1/2014</td> <td>151</td> </tr> <tr> <td>21 Re two Citizen Petitions</td> <td></td> </tr> <tr> <td>22 Exhibit 8 NCI: Ovarian, Fallopian Tube, and</td> <td>174</td> </tr> <tr> <td>23 Primary Peritoneal Cancer</td> <td></td> </tr> <tr> <td>24 Prevention (PDQ), Pages 1-20</td> <td></td> </tr> </table> <p>Page 5</p> | 1 INDEX | PAGE | 2 EXAMINATION OF WILLIAM M. SAGE, MD, JD | PAGE | 3 BY MR. HEGARTY | 8 | 4 AFTERNOON SESSION | 213 | 5 DR. THOMPSON | 426 | 6 | | 7 SAGE DEPOSITION EXHIBITS | | 8 NUMBER DESCRIPTION | PAGE | 9 Exhibit 1 Sage Invoice dated 8/10/2021 | 11 | 10 Exhibit 2 Canada Screening Assessment | 52 | 11 Talc, April 2021, Pages 1-65 | | 12 Exhibit 3 Sage Curriculum Vitae | 58 | 13 Exhibit 4 7/2/2021 Expert Report of | 75 | 14 William M. Sage, MD, JD | | 15 Exhibit 5 Literature from Expert Report | 82 | 16 Pages 1-18 | | 17 Exhibit 6 Second Amended Notice of Oral | 96 | 18 Deposition of William M. Sage, MD, JD | | 19 and Duces Tecum, | | 20 Exhibit 7 HHS/Musser Letter dated 4/1/2014 | 151 | 21 Re two Citizen Petitions | | 22 Exhibit 8 NCI: Ovarian, Fallopian Tube, and | 174 | 23 Primary Peritoneal Cancer | | 24 Prevention (PDQ), Pages 1-20 | |
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| 15 Exhibit 5 Literature from Expert Report | 82 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 16 Pages 1-18 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| 1 SAGE DEPOSITION EXHIBITS | | 1 P R O C E E D I N G S | |
| 2 NUMBER DESCRIPTION PAGE | | 2 - - - | |
| 3 Exhibit 9 NCI: PDQ Screening and Prevention 188 | | 3 WILLIAM M. SAGE, MD, JD | |
| 4 Editorial Board, Pages 1-2 | | 4 called for examination, and, after having been | |
| 5 Exhibit 10 Sage Curriculum Vitae - Current 213 | | 5 duly sworn, was examined and testified as | |
| 6 Exhibit 11 Notebook: "William Sage, MD 220 | | 6 follows: | |
| 7 Deposition Exhibits" | | 7 - - - | |
| 8 Exhibit 12 Regulatory Toxicology and 224 | | 8 EXAMINATION | |
| 9 Pharmacology, Talc: Consumer | | 9 - - - | |
| 10 Uses and Health Perspectives, Carr | | 10 BY MR. HEGARTY: | |
| 11 Exhibit 13 Statement of Susan T. Mayne, PHD 248 | | 11 Q. Good morning, Dr. Sage. | |
| 12 12/4/2019 "Building Consumer | | 12 A. Good morning. | |
| 13 Confidence by Empowering FDA to | | 13 Q. Would you please tell us your full | |
| 14 Improve Cosmetic Safety" | | 14 name? | |
| 15 Exhibit 14 IARC Monographs on the Evaluation 271 | | 15 A. William Sage. | |
| 16 of Carcinogenic Risks to Humans | | 16 Q. Who is your current employer? | |
| 17 Arsenic, Metals, Fibres, and Dusts | | 17 A. The University of Texas at Austin. | |
| 18 Exhibit 15 Hopkins 28 List of Documents 277 | | 18 Q. Do you also have a separate personal | |
| 19 Exhibit 16 J&J Press Release: Company | | 19 consulting business for litigation? | |
| 20 Investigation Confirms No Asbestos | | 20 A. Not for litigation. I have a | |
| 21 in Johnson's Baby Powder 12/3/2019 | | 21 Schedule C for any additional income I may make in | |
| 22 Exhibit 17 Pier 47 List of Documents 291 | | 22 the course of the year doing academic-related | |
| 23 Exhibit 18 Talc Timeline 308 | | 23 things. | |
| 24 PCPC_MDL00062175 - 00062196 | | 24 Q. Are the -- is the income you earn as | |
| Page 7 | | | Page 9 |
| 1 SAGE DEPOSITION EXHIBITS | | 1 an expert witness ran through this Schedule C | |
| 2 NUMBER DESCRIPTION PAGE | | 2 business? | |
| 3 Exhibit 19 Plaintiffs' MDL Expert Witnesses 372 | | 3 A. It will. | |
| 4 Exhibit 20 IARC Monographs on the Evaluation 384 | | 4 Q. When did you set up your Schedule C | |
| 5 of Carcinogenic Risk to Humans | | 5 business? | |
| 6 Volume 93, Carbon Black, Titanium | | 6 A. Many years ago. | |
| 7 Dioxide, and Talc, Lyon, France 2010 | | 7 Q. As far as the fees that you do earn | |
| 8 Exhibit 21 Lessons From Breast Implant 390 | | 8 as an expert witness, do they go directly to you? | |
| 9 Litigation by William M. Sage | | 9 A. Yes. | |
| 10 Exhibit 22 JAMA: Association of Powder Use 394 | | 10 Q. Do you have any other sources of | |
| 11 in the Genital Area With Risk of | | 11 income besides salary from the University of Texas | |
| 12 Ovarian Cancer, O'Brien et al. | | 12 and any fees you earn as speaker or as an expert? | |
| 13 Exhibit 23 Materials Considered_William 410 | | 13 A. No, beyond the usual investments | |
| 14 Sage, MD, JD Supplemental Materials | | 14 that people might have. | |
| 15 Exhibit 24 Safety Assessment of Talc as 415 | | 15 Q. What are you charging plaintiffs' | |
| 16 Used in Cosmetics, Fiume et al. | | 16 counsel in this case for your -- your time and | |
| 17 Exhibit 25 Witness Stack of Documents 418 | | 17 your consultation? | |
| 18 Exhibit 26 Literature, Depositions and 423 | | 18 A. I'm charging \$800 an hour. | |
| 19 Transcripts, Pages 1-3 | | 19 Q. On what do you base that \$800 an | |
| 20 Exhibit 27 2/10/98 FDA's Cosmetic Program: 426 | | 20 hour figure? | |
| 21 Current Projects and Resources | | 21 A. I do this very, very seldom. So I | |
| 22 and A Discussion of the "Model" | | 22 made some inquiries among friends for benchmarks, | |
| 23 Program, PCPC0058604 - 0058654 | | 23 and that seemed to be an appropriate one. | |
| 24 | | 24 Q. That was going to be my next | |

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| <p>1 question.</p> <p>2 Have you ever been paid in any other 3 situation at the rate of \$800 an hour?</p> <p>4 A. Specifically 800? No. Perhaps 750, 5 perhaps 6. The last time I did any expert witness 6 work for a private party was many years -- was 7 probably 10 years ago or so.</p> <p>8 Q. What was that expert witness 9 activity for a private party?</p> <p>10 A. I was assisting two merging 11 hospitals in antitrust litigation.</p> <p>12 Q. Was that a matter in which you were 13 designated as an expert witness?</p> <p>14 A. Yes. Again, I'm not a litigator. 15 So I don't always get the procedural posture 16 right. It was in anticipation of an 17 administrative trial before the FTC that didn't 18 ever happen.</p> <p>19 Q. Okay. You don't make \$800 an hour 20 as a professor at the University of Texas, right?</p> <p>21 A. No.</p> <p>22 Q. Did anyone outside of perhaps the 23 lawyers for the plaintiffs in this case assist you 24 in any way with preparing your expert witness</p> | <p>Page 10</p> <p>1 BY MR. HEGARTY:</p> <p>2 Q. Would you -- this is yours.</p> <p>3 A. Okay.</p> <p>4 Q. Would you please look at Exhibit 5 No. 1 and tell me whether that is an invoice that 6 you prepared in connection with your work on this 7 MDL case.</p> <p>8 A. Yes, it is.</p> <p>9 May I just ask you. While we're 10 doing this, when you hand me things, what am I -- 11 am I supposed to keep them in a pile, return them 12 to you? I don't know.</p> <p>13 Q. I would recommend you keep them in a 14 pile as I may refer back to them.</p> <p>15 A. Okay. Thank you.</p> <p>16 Q. So with regard to Exhibit No. 1, 17 this is an invoice that you prepared; is that 18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. It's dated August 10, 2021 and lists 21 a total amount of \$64,000; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Have you been paid for this invoice?</p> <p>24 A. Yes.</p> |
| <p>1 report?</p> <p>2 A. I'm sorry. Would you repeat that?</p> <p>3 Q. Sure.</p> <p>4 Did anyone assist you in preparing 5 your expert witness report?</p> <p>6 A. I had assistance with formatting, 7 footnoting, and finding appropriate references 8 from the plaintiffs' lawyers.</p> <p>9 Q. Who in particular helped you with 10 those types of activities?</p> <p>11 A. Various people on the team and so, I 12 mean, Dr. Thompson and then I know people more by 13 first name. Patrick, Brianne. I don't remember 14 everybody's last name.</p> <p>15 Q. Did anyone outside of the lawyers 16 for the plaintiffs in any way assist you in 17 preparing your report?</p> <p>18 A. No.</p> <p>19 MR. HEGARTY: I'm going to 20 mark as Exhibit No. 1 the invoice that we 21 have been provided from you by counsel 22 for the plaintiffs.</p> <p>23 (Document marked for 24 identification as Sage Exhibit 1.)</p> | <p>Page 11</p> <p>1 Q. Have you prepared any other invoices 2 besides the one we marked as Exhibit No. 1?</p> <p>3 A. No.</p> <p>4 Q. Have you generated additional time 5 in which you will invoice since preparing this 6 invoice on August 10, 2021?</p> <p>7 A. Yes.</p> <p>8 Q. How much additional time do you plan 9 to invoice through today? If you can estimate it.</p> <p>10 A. I haven't added it up. I would say 11 ballpark, if this was 80 hours, 40 hours.</p> <p>12 Q. Okay. With regard to this 13 particular invoice, in the "For" section you say 14 "Review of materials in preparation of expert 15 report from June 5 to June 2, 2021."</p> <p>16 Does June 5 represent the first date 17 that you started working on this case?</p> <p>18 A. So you said June 2. I think you 19 meant July 2 so...</p> <p>20 Q. July 2. I'm sorry.</p> <p>21 A. June 5th represents the first date 22 that I billed any time. All of my preliminary 23 discussions, investigations, deciding what the 24 case was about, and what my preliminary opinions</p> |

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| <p>1 might be I regarded as not billable.</p> <p>2 Q. With regard to the reference below</p> <p>3 the "For" line to "Initial Meetings and Case</p> <p>4 Review," who did you meet with initially that's</p> <p>5 referenced in that entry?</p> <p>6 A. To the best of my recollection,</p> <p>7 these were Zoom meetings with people I hadn't</p> <p>8 necessarily met before, but Dr. Thompson,</p> <p>9 Ms. O'Dell, Ms. Parfitt I think were the first</p> <p>10 significant call. And then Patrick and Brianne at</p> <p>11 some -- at some point early on, but I don't</p> <p>12 remember the details.</p> <p>13 Q. That same line refers to an entry or</p> <p>14 refers to "Case Review."</p> <p>15 What did you mean when you put in</p> <p>16 "Case Review"?</p> <p>17 A. Cutting me a little slack on the</p> <p>18 terminology because I don't do this very often, I</p> <p>19 just meant this litigation. So, you know,</p> <p>20 whatever materials were -- were offered to me or</p> <p>21 whatever news reports I might have found just on</p> <p>22 the posture of this litigation. I hadn't been</p> <p>23 following any of the individual cases, and I</p> <p>24 hadn't specifically been following multidistrict</p> | <p>Page 14</p> <p>1 Q. Were the -- when you say -- what was</p> <p>2 the preliminary outline of issues?</p> <p>3 A. That was perhaps my inartful way of</p> <p>4 saying thinking about the issues and how I would</p> <p>5 express my opinions.</p> <p>6 Q. Was it a draft of your report?</p> <p>7 A. Almost -- I don't know exactly how</p> <p>8 to answer that. I mean, it was my initial</p> <p>9 thinking. So whether it constitutes a draft in my</p> <p>10 notes or not, I really can't say. That's, I</p> <p>11 think, a matter of your practice and requirements.</p> <p>12 Q. Well, the entry below that does</p> <p>13 refer to "Preparing Expert Report."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. So I see that as was it not two</p> <p>17 different activities, one preparing an outline and</p> <p>18 one drafting your report?</p> <p>19 DR. THOMPSON: Object to form.</p> <p>20 THE WITNESS: I itemized them</p> <p>21 differently, I believe, to reflect the</p> <p>22 stages of my thinking. I'm sure we'll</p> <p>23 discuss much of this today.</p> <p>24 The stages of my thinking in</p> |
| <p>1 litigation.</p> <p>2 Q. The next line below the line</p> <p>3 "Initial Meetings and Case Review" says</p> <p>4 "Preliminary Outline of Issues."</p> <p>5 Did you actually prepare a document</p> <p>6 where you outlined the issues?</p> <p>7 A. Not a -- not a structured document.</p> <p>8 My -- my own notes and my kind of musings about</p> <p>9 how -- how this would develop as a report.</p> <p>10 Q. Do you still have those notes?</p> <p>11 A. I don't know, actually.</p> <p>12 Q. Were they handwritten or something</p> <p>13 you typed on the computer?</p> <p>14 A. Handwritten.</p> <p>15 MR. HEGARTY: We would ask</p> <p>16 that the doctor -- if you ask the doctor</p> <p>17 to look for those notes.</p> <p>18 DR. THOMPSON: And we'll</p> <p>19 object as draft of report.</p> <p>20 MR. HEGARTY: Sure.</p> <p>21 Understood, but we would ask that --</p> <p>22 that -- well, let me back up before I</p> <p>23 make the further request.</p> <p>24 BY MR. HEGARTY:</p> | <p>Page 15</p> <p>1 terms of an outline of issues just</p> <p>2 thinking about: What are the</p> <p>3 self-regulatory obligations? What are</p> <p>4 the disclosure obligations? You know,</p> <p>5 what are the differences between</p> <p>6 cosmetics regulations and drug</p> <p>7 regulations that are relevant?</p> <p>8 Various things of that sort</p> <p>9 that are more general and almost</p> <p>10 certainly wouldn't have involved</p> <p>11 reviewing any corporate documents or --</p> <p>12 or deposition testimony from the</p> <p>13 litigation. Whereas, the deep dive is</p> <p>14 what followed that, and that's why I made</p> <p>15 the distinction.</p> <p>16 MR. HEGARTY: Well, we'll make</p> <p>17 a request for those notes. I understand</p> <p>18 your objection. I just wanted to state</p> <p>19 it on the record and we'll do necessary</p> <p>20 follow-up, okay?</p> <p>21 DR. THOMPSON: (Nods head).</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. The University of Texas has</p> <p>24 disclosure policies for all work outside of your</p> |

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| <p>1 job; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Have you disclosed the work you're</p> <p>4 doing in this litigation pursuant to that policy?</p> <p>5 A. I've disclosed everything that's</p> <p>6 required to be disclosed and received any approval</p> <p>7 that was required to be received.</p> <p>8 Q. As it relates to this case, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Did you have to prepare a written</p> <p>11 report disclosing your work on this case?</p> <p>12 A. Only in the most general terms.</p> <p>13 Q. But you actually prepared a report</p> <p>14 and submitted it to someone?</p> <p>15 A. I filled out an online form.</p> <p>16 Q. Do you have a copy of that online</p> <p>17 form?</p> <p>18 A. No.</p> <p>19 Q. Did you have to get approval to do</p> <p>20 this work?</p> <p>21 A. I did have to get approval to do</p> <p>22 this work.</p> <p>23 Q. Who did you have to get approval</p> <p>24 from?</p> | <p>Page 18</p> <p>1 this, including when I'm teaching professional</p> <p>2 responsibility classes.</p> <p>3 The way that the University of Texas</p> <p>4 system currently works, they have centralized the</p> <p>5 approval of outside activities that would</p> <p>6 constitute conflict of commitment; in other words,</p> <p>7 that might take time away from one's teaching</p> <p>8 obligations to the university. They centralized</p> <p>9 those at the University of Texas system level.</p> <p>10 The University of Texas is comprised of several</p> <p>11 campuses.</p> <p>12 That particular form asked me a</p> <p>13 number of questions which I filled in on the form</p> <p>14 and asked me to identify the person who would</p> <p>15 grant approval. I designated the vice dean at the</p> <p>16 law school because he's the person I would expect</p> <p>17 to grant approval.</p> <p>18 Nothing happened for a while. I</p> <p>19 reached out to him. He investigated, found that</p> <p>20 he could grant approval, granted approval, told me</p> <p>21 he had granted approval, and the next time I</p> <p>22 checked the website approval had been granted.</p> <p>23 Q. Okay. What is his name?</p> <p>24 A. Robert Chesney.</p> |
| <p>1 A. I had to get approval from whoever</p> <p>2 was the designated individual to grant approval.</p> <p>3 I identified the vice dean at the University of</p> <p>4 Texas Law School, who granted approval.</p> <p>5 Q. What -- in what form was the</p> <p>6 approval granted?</p> <p>7 A. A click on a website.</p> <p>8 Q. Click on a website to see if it says</p> <p>9 granted?</p> <p>10 In other words, how was it done?</p> <p>11 Was it done by an e-mail or was it done by a phone</p> <p>12 call? Was it done by an in-person sign-off?</p> <p>13 A. Would you like me to outline the</p> <p>14 process as best as I can recall it?</p> <p>15 Q. All I'm really looking for is: In</p> <p>16 what form did you get the approval?</p> <p>17 A. I submitted the form. There are --</p> <p>18 there are independent requirements at the</p> <p>19 University of Texas and, as you probably know,</p> <p>20 this is an area that's in flux at many</p> <p>21 universities.</p> <p>22 I also have a significant academic</p> <p>23 expertise in conflict of interest and conflict of</p> <p>24 commitment policy. So I pay attention to all of</p> | <p>Page 19</p> <p>1 Q. Have you otherwise advised anyone at</p> <p>2 the University of Texas of your work on this case?</p> <p>3 A. No.</p> <p>4 Q. What courses are you teaching, if</p> <p>5 any, this summer -- this semester?</p> <p>6 A. So this semester I'm a visiting</p> <p>7 professor here in Washington, DC at the George</p> <p>8 Washington University Law School, and I'm teaching</p> <p>9 -- that is a standard turnkey operation where the</p> <p>10 University of Texas remains my employer. I am</p> <p>11 only paid by them, and they have a separate</p> <p>12 agreement in a standard fashion for visiting</p> <p>13 professorships with the institution that is</p> <p>14 hosting the semester.</p> <p>15 And at GW, I'm teaching a</p> <p>16 three-credit legislation and regulation course,</p> <p>17 which is my standard regulatory theory and</p> <p>18 regulatory design class, and I'm teaching a</p> <p>19 for-credit health law and policy survey class.</p> <p>20 Q. Have you taught classes either as a</p> <p>21 visiting professor or at the University of Texas</p> <p>22 ever since you started at Texas? In other words,</p> <p>23 have you taught classes every semester either at</p> <p>24 Texas or somewhere else since you started?</p> |

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| <p>1 A. No. I have occasionally had a 2 research semester, or I've had additional teaching 3 credit, or I've had an eminent scholar fellowship 4 that would relieve me of teaching. But I really 5 like to teach, so I usually teach the equivalent 6 of a full load every year.</p> <p>7 Q. Did you teach classes every semester 8 while at Columbia?</p> <p>9 A. Columbia, unlike the University of 10 Texas, has a structured sabbatical program. So 11 not when I had a formal sabbatical, and I believe 12 also not when I had large research grants that the 13 law school based relief of teaching on. But, in 14 general, I teach every semester and, in general, I 15 teach a full or an overload. I'm teaching an 16 overload this semester.</p> <p>17 Q. Since 2001, have you been a 18 full-time law school professor?</p> <p>19 A. Since 1995, I've been a full-time 20 law school professor.</p> <p>21 Q. 1995.</p> <p>22 And the courses you have taught 23 since 1995 have all been in a law school, correct?</p> <p>24 A. I am interdisciplinary by training.</p> | <p>Page 22</p> <p>1 courses. I may be teaching them about advocacy. 2 I'm often teaching them about professional 3 responsibility. I teach my professional ethics 4 classes from a comparative professions perspective 5 and do a lot of law/medicine comparisons and 6 occasionally other professions also.</p> <p>7 Q. But you're not teaching the practice 8 of medicine, correct?</p> <p>9 A. I'm not teaching clinical medicine, 10 no.</p> <p>11 Q. And you've never taught clinical 12 medicine to gynecologic oncologists, correct?</p> <p>13 A. No.</p> <p>14 Q. You have not taught clinical 15 medicine to oncologists, correct?</p> <p>16 A. I have not taught clinical medicine. 17 You can ask -- you can subdivide that all you 18 want. I have not taught clinical medicine.</p> <p>19 Q. You don't teach epidemiology, 20 correct?</p> <p>21 A. I teach -- I use epidemiological 22 materials in a fair amount of my regulatory 23 teaching. I mean, we consider all sorts of 24 preventive screens and tests. We do a lot of</p> |
| <p>Page 23</p> <p>1 I am dually tenured in both the law school and 2 medical school at University of Texas. My last -- 3 before GW, my last visiting professorship at NYU, 4 I had a visiting professor appointment both in law 5 school and at NYU School of Medicine.</p> <p>6 And virtually all of the classes I 7 teach at my home institution are cross-listed in 8 business and public affairs and in the medical 9 schools, and I typically design my courses to 10 attract enrollment from many different schools.</p> <p>11 Q. So in your career as a professor, 12 you have taught medical students?</p> <p>13 A. Indeed, many times.</p> <p>14 Q. When is the last time you had a 15 course in which you taught medical students?</p> <p>16 A. Last spring I taught my health, law, 17 and policy class at Texas and had over a dozen 18 third-year medical students enrolled, which an 19 entering class of 50 is a significant number of 20 the medical school class. So I'm actually very 21 proud of how many medical students I teach.</p> <p>22 Q. When you teach medical students, 23 you're teaching them law-related courses, correct?</p> <p>24 A. I'm teaching them policy-related</p> | <p>Page 25</p> <p>1 basic epidemiological calculations. I do have 2 public health students in my classes from time to 3 time, but, no, I've never taught a course in 4 epidemiology.</p> <p>5 Q. You don't teach courses in 6 toxicology, correct?</p> <p>7 A. No, I don't.</p> <p>8 Q. Have you ever taught any courses on 9 FDA's cosmetic regulations?</p> <p>10 A. I teach FDA-related issues 11 constantly, including within the last week. I've 12 never used a cosmetic regulatory example in my 13 teaching.</p> <p>14 Q. Have you ever taught courses on the 15 manufacturing of cosmetics?</p> <p>16 A. Have I ever taught courses on the 17 manufacturing of cosmetics? No.</p> <p>18 Q. Have you ever taught courses on the 19 marketing of cosmetics?</p> <p>20 A. I have taught -- I've -- when you 21 say "course," do you mean an entire semester 22 course or do you mean a class session or part of a 23 class session?</p> <p>24 Q. Well, have you ever -- let me ask it</p> |

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| <p>1 a different way.</p> <p>2 Have you ever taught about the</p> <p>3 marketing of cosmetics specifically as to</p> <p>4 cosmetics?</p> <p>5 A. Again, I've taught about the</p> <p>6 marketing of drugs. I've taught about the</p> <p>7 marketing of many things. I don't believe I've</p> <p>8 ever taught specifically about the marketing of</p> <p>9 cosmetics.</p> <p>10 Q. Have you ever taught specifically</p> <p>11 about the labeling of cosmetics?</p> <p>12 A. No. Again, with the caveat that I</p> <p>13 teach about labeling and information disclosure</p> <p>14 all the time.</p> <p>15 Q. Have you ever taught any courses</p> <p>16 about the testing of cosmetics?</p> <p>17 A. No.</p> <p>18 Q. Have you ever taught a course on</p> <p>19 Canadian cosmetic regulatory law?</p> <p>20 A. No.</p> <p>21 Q. Have you ever taught courses on FDA</p> <p>22 regulations as they relate to drugs, medical</p> <p>23 devices, or over-the-counter medications?</p> <p>24 A. I've taught many class sessions that</p> | Page 26 | <p>1 In terms of my statement in</p> <p>2 paragraph 7 of my report, I was trying to</p> <p>3 lay out the general expertise that would</p> <p>4 relate to the specific topics in the</p> <p>5 report.</p> <p>6 BY MR. HEGARTY:</p> <p>7 Q. Tell me when you first read the FDA</p> <p>8 cosmetic statutes and regulations that you cite in</p> <p>9 your report.</p> <p>10 A. The cosmetic-specific regulations I</p> <p>11 first read as I was deciding whether I would</p> <p>12 accept the invitation to serve as an expert</p> <p>13 witness. The underlying pillars of FDA</p> <p>14 regulations regarding, say, adulteration and</p> <p>15 misbranding, which are applicable to cosmetics,</p> <p>16 the general history of the Pure Food and Drug Act,</p> <p>17 of the Food, Drug, and Cosmetic Act of 1938, I</p> <p>18 have been teaching this my entire career and have</p> <p>19 read them many times.</p> <p>20 Q. But prior to being contacted as</p> <p>21 potentially serving as expert witness in this</p> <p>22 case, you had never read the cosmetic statutes and</p> <p>23 regulations that you cite in your report, correct?</p> <p>24 DR. THOMPSON: Object to form.</p> | Page 28 |
| <p>1 involve those issues. I've never taught a</p> <p>2 semester-long FDA law class.</p> <p>3 Q. There is a course at University of</p> <p>4 Texas called "Food Safety Law" that gets into FDA</p> <p>5 regulations.</p> <p>6 You've never taught that class, have</p> <p>7 you?</p> <p>8 A. I have not taught that.</p> <p>9 Q. In paragraph 7 of your report, you</p> <p>10 say that your expertise is in the science of</p> <p>11 policy-making, including the science of regulatory</p> <p>12 design.</p> <p>13 You go on to say that you are an</p> <p>14 expert in government-supervised health and</p> <p>15 financial self-regulations, corporate compliance</p> <p>16 and corporate governance, and the regulations of</p> <p>17 self-governing professions.</p> <p>18 Nowhere in your report do you list</p> <p>19 any expertise in FDA cosmetic regulations,</p> <p>20 correct?</p> <p>21 DR. THOMPSON: Object to form.</p> <p>22 THE WITNESS: I think a lot</p> <p>23 of my report is certain proceedings and</p> <p>24 FDA cosmetic regulations.</p> | Page 27 | <p>1 THE WITNESS: Again, I had</p> <p>2 read the general statutes because the</p> <p>3 general statutes are applicable beyond</p> <p>4 cosmetics. I had not read the CFR</p> <p>5 entries for cosmetics.</p> <p>6 BY MR. HEGARTY:</p> <p>7 Q. So in particular, prior to being</p> <p>8 contacted by plaintiffs' lawyers in this case, you</p> <p>9 had never read 21 CFR 740.1, correct?</p> <p>10 DR. THOMPSON: Object to form.</p> <p>11 THE WITNESS: So, again, I'm</p> <p>12 just going to take the liberty of -- of</p> <p>13 when we're doing code sections, even</p> <p>14 though I'm pretty sure I know which ones</p> <p>15 you're referring to or CFR sections, I'm</p> <p>16 just going to have them around so that I</p> <p>17 can -- I can --</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. Sure.</p> <p>20 A. -- make sure I answer you</p> <p>21 accurately.</p> <p>22 So you were regarding --</p> <p>23 Q. Yes.</p> <p>24 A. -- the warning statements on</p> | Page 29 |

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| <p>1 cosmetics specifically? No, I had not read that 2 section prior to considering these issues. 3 Q. You're not an expert in FDA cosmetic 4 regulations. True? 5 A. I -- 6 DR. THOMPSON: Object to form. 7 THE WITNESS: I consider 8 myself an expert in cosmetic regulations. 9 It's a short number of regulations that 10 fit in a larger scheme that I have great 11 familiarity with. 12 BY MR. HEGARTY: 13 Q. Would you have called yourself an 14 expert in FDA cosmetic regulations prior to being 15 contacted by the plaintiffs' counsel in this case? 16 DR. THOMPSON: Object to form. 17 THE WITNESS: I'm not sure I 18 know the answer to that. It would have 19 depend on the context I was being asked 20 the question. 21 I wouldn't have asserted that 22 as a focused expertise, but I would have 23 understood that a small amount of -- of 24 intense research would be sufficient to</p> | <p>Page 30</p> <p>1 being hired to work on this case? 2 DR. THOMPSON: Object to form. 3 THE WITNESS: I have not done 4 specific work on cosmetic regulations 5 prior to my involvement with these 6 issues. 7 BY MR. HEGARTY: 8 Q. Had you ever heard the term 9 "asbestiform" before being hired in this case? 10 DR. THOMPSON: Object to form. 11 THE WITNESS: I have an 12 undergraduate degree in biochemistry that 13 included a couple of geology classes. So 14 chances are, yes, but I don't recall. 15 BY MR. HEGARTY: 16 Q. Had you ever heard the term 17 non-asbestiform before being hired? 18 A. Same answer. 19 DR. THOMPSON: Object to form. 20 BY MR. HEGARTY: 21 Q. Had you ever heard the term 22 "elongated mineral particles" before being hired 23 in this case? 24 DR. THOMPSON: Object to form.</p> |
| <p>Page 31</p> <p>1 connect what was specific to cosmetic 2 regulation to my general food, drug, and 3 cosmetic expertise. So probably I would 4 have. 5 BY MR. HEGARTY: 6 Q. Even though you had never read the 7 cosmetic regulations, correct? 8 DR. THOMPSON: Object to form. 9 THE WITNESS: (Laugh). Yes. 10 BY MR. HEGARTY: 11 Q. Okay. Fair enough. 12 Tell me -- well, strike. Let me 13 back up. 14 Have you had any formal training, 15 formal courses on FDA cosmetic regulations and 16 practices? 17 A. I have not taken any formal courses 18 on cosmetic regulation. I have taken -- I have 19 attended many talks and read many papers and 20 attended conferences involving FDA issues overall 21 several times. 22 Q. Focusing specifically on cosmetic 23 regulations, can you cite for me all the work you 24 have done concerning cosmetic regulations before</p> | <p>Page 33</p> <p>1 THE WITNESS: Elongated 2 mineral particles was an interesting 3 acronym. My impression is it's 4 relatively new. So I don't believe I had 5 ever heard that before. 6 BY MR. HEGARTY: 7 Q. Had you ever heard the phrase 8 "fibrous talc" before being hired in this case? 9 DR. THOMPSON: Object to form. 10 THE WITNESS: Again, I don't 11 know. 12 BY MR. HEGARTY: 13 Q. Have you ever been designated as an 14 expert witness in any lawsuit before this one? 15 A. As we were discussing earlier, I 16 served as a named expert, but did not ultimately 17 testify in a hospital antitrust suit involving two 18 private hospitals in Illinois and the Federal 19 Trade Commission, roughly, 10 years ago, maybe 12. 20 Q. Any time other than that instance 21 that you are aware of you've been actually 22 designated or identified as an expert witness in a 23 lawsuit? 24 A. No.</p> |

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| <p>1 Q. You received both a law and medical 2 degrees -- or let me rephrase that. 3 You received both law and medical 4 degrees at Stanford, correct? 5 A. Correct. 6 Q. Which one did you complete first? 7 A. (Laugh). There are many ways to 8 answer that question. 9 I entered medical school first. I 10 entered law school near the end of my third year 11 of medical school. I integrated the two programs, 12 and I received both degrees the same day. 13 Q. After one year of residency in 14 anesthesiology, you went to work at a law firm in 15 Los Angeles; is that correct? 16 A. Not -- not exactly. I did -- I 17 completed an internship year in what's called the 18 transitional year Internship in San Diego, which 19 would have been the first year of a four-year 20 anesthesia residency. I then completed the second 21 year of that residency at Johns Hopkins, you know, 22 in the normal course, and having completed that 23 year, I then moved back to California and became 24 an associate at a law firm.</p> | <p>Page 34</p> <p>1 related to public finance, securities, mergers and 2 acquisitions? 3 A. Yes. 4 Q. You were an associate at O'Melveny 5 for four years before leaving to become a law 6 professor? 7 A. I was an associate for -- an 8 associate from October of 1990 until January of 9 1993, when I resigned in order to work in the 10 White House on that era of Clinton Administration 11 health reform. And then the following September, 12 perhaps October, I rejoined O'Melveny on a half 13 time basis and I worked there until I became a law 14 professor in 1995. 15 Q. Are you aware that O'Melveny 16 represents Johnson & Johnson? 17 A. I am. John Beisner was someone I 18 knew slightly when I worked in the DC office on 19 Supreme Court litigation during my otherwise 20 corporate practice years. 21 Q. So you did work with lawyers 22 representing Johnson & Johnson? 23 DR. THOMPSON: Object to form. 24 THE WITNESS: No. I knew</p> |
| <p>1 Q. Why did you stop practicing 2 medicine? 3 A. My -- my intent was to acquire 4 practice experience in each profession and to go 5 back and forth between the two until I had a good 6 grounding in both. 7 Q. When is the last time you treated a 8 patient? 9 A. I have an active Texas medical 10 license. I do not maintain a clinical practice. 11 I do my best to keep my clinical skills up, but I 12 don't treat patients. So the last time I treated 13 a patient in a formal sense was during my second 14 year of postgraduate training so as an anesthesia 15 resident at Johns Hopkins. 16 Q. What year was that? 17 A. That would have been 1990. 18 Q. You went to work at O'Melveny in Los 19 Angeles, correct? 20 A. Correct. 21 Q. And you were an associate in the 22 corporate group; is that right? 23 A. Yes. 24 Q. And your CV says you worked on cases</p> | <p>Page 35</p> <p>1 that John Beisner was in the office and 2 said hi to him a few times. 3 BY MR. HEGARTY: 4 Q. Did you ever work on any matters 5 involving Johnson & Johnson? 6 A. No. 7 Q. What percentage of your working time 8 this year has been spent on litigation matters? 9 A. Would you rephrase that? 10 Q. Sure. 11 A. Sorry. 12 Q. Are you working on any litigation 13 matters as an expert witness besides the one we're 14 here to talk about today? 15 A. No. 16 Q. How much time have you spent -- I 17 guess, let me back up. 18 The time you've spent working on 19 this case has been in 2021, correct? 20 A. Correct. 21 Q. And it's been the time we talked 22 about in the invoice, plus the other time you 23 billed since that time; is that right? 24 A. Correct.</p> |

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| <p>1 Q. Did you earn any fees as an expert 2 witness in 2020?</p> <p>3 A. No.</p> <p>4 Q. How about 2019?</p> <p>5 A. No.</p> <p>6 Q. Before this case, have you ever been 7 designated as an expert to testify about 8 cosmetics?</p> <p>9 A. No.</p> <p>10 Q. Before this case, have you ever been 11 designated as an expert to testify about cosmetic 12 regulations?</p> <p>13 A. No.</p> <p>14 Q. Have you ever been designated as an 15 expert to talk about pharmaceutical, medical 16 device, or over-the-counter regulations?</p> <p>17 A. No, but I don't do much expert 18 witness work.</p> <p>19 Q. Is this the only legal case you're 20 currently consulting on?</p> <p>21 A. Yes.</p> <p>22 Q. How many times have you given a 23 deposition?</p> <p>24 A. Only -- only once.</p> | <p>Page 38</p> <p>1 Q. Have you ever been hired by a 2 company to consult with regard to a prescription 3 drug?</p> <p>4 A. No.</p> <p>5 May I just ask. When you say "hired 6 by a company," I haven't, to my knowledge, been 7 hired by anybody for these purposes. But when you 8 say "a company," do you mean by, I mean, as 9 opposed to a law firm or do you mean just all 10 others?</p> <p>11 Q. Yes, it would be a company.</p> <p>12 My question would be: Have you ever 13 been hired by a company who would -- who makes the 14 product --</p> <p>15 A. Okay.</p> <p>16 Q. -- the product I'm talking about, to 17 consult with regard to that particular product, 18 and my last question was a prescription drug?</p> <p>19 A. I understand now.</p> <p>20 Q. Have you ever been hired by a 21 company to consult with regard to a medical device 22 they are manufacturing?</p> <p>23 A. No.</p> <p>24 Q. Have you ever been hired by a</p> |
| <p>Page 39</p> <p>1 Q. When was that?</p> <p>2 A. That was, roughly, 10 years ago in 3 the antitrust litigation I mentioned. An 4 excellent assistant section chief from the FTC 5 took my deposition in Austin, Texas on that case.</p> <p>6 Q. Who were the hospitals involved?</p> <p>7 A. It was two hospitals in Rockford, 8 and they have changed their names enough so that 9 I, frankly, can't remember. I would have to look 10 at something to refresh my recollection.</p> <p>11 Q. Okay. Have you ever taken a 12 deposition as a lawyer?</p> <p>13 A. No.</p> <p>14 Q. Have you ever testified in court?</p> <p>15 A. I've -- I've never testified as a 16 witness in court. I've served on juries and have 17 voir dire.</p> <p>18 Q. Have you ever been hired by a 19 company to consult with regard to a cosmetic 20 ingredient?</p> <p>21 A. No.</p> <p>22 Q. Have you ever been hired by a 23 company to consult regarding a cosmetic product?</p> <p>24 A. No.</p> | <p>Page 41</p> <p>1 company to consult with regard to an 2 over-the-counter product that they are 3 manufacturing?</p> <p>4 A. No.</p> <p>5 Qualification, though I would not be 6 able to remember the details, is I provide 7 informal advice many times to people unpaid with 8 no documentation, often my own students, sometimes 9 students elsewhere in the university who are doing 10 collaborative startup work. And they have 11 something that they are interested in and has a 12 health policy, health reimbursement, health law 13 type connection, and they reach out, and I am very 14 generous with my -- my unpaid time.</p> <p>15 So it's quite possible that 16 something meeting these descriptions happened 17 during those contacts over the years.</p> <p>18 Q. Have you ever consulted with a 19 consumer product company on any issue?</p> <p>20 DR. THOMPSON: Object to form.</p> <p>21 THE WITNESS: Have I ever 22 consulted. Again, for hire? No.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. Has any cosmetic, pharmaceutical,</p> |

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| <p>1 company or over-the-counter company ever hired you 2 as a consultant for any issue?</p> <p>3 A. Would you repeat that question?</p> <p>4 Q. Sure.</p> <p>5 Has any cosmetic, pharmaceutical, or 6 over-the-counter product company ever hired you to 7 assist them with anything?</p> <p>8 A. Again, not for hire. Not for hire. 9 I have a wide circle of acquaintance. I do 10 speaking for many organizations, including 11 conferences that may have been funded by 12 pharmaceutical companies over the years, but 13 nobody has hired me individually for consulting 14 advice.</p> <p>15 Q. Have you ever been -- strike that.</p> <p>16 So you have never been employed by a 17 pharmaceutical, medical device, or consumer 18 product company, correct?</p> <p>19 A. Correct.</p> <p>20 Q. You've never worked for Johnson & 21 Johnson, correct?</p> <p>22 A. No.</p> <p>23 Q. You've never worked for any Johnson 24 & Johnson company, right?</p> | <p>Page 42</p> <p>1 practice that would be relevant to 2 cosmetic companies.</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. You have no personal experience on 5 working within a cosmetic company?</p> <p>6 A. Correct.</p> <p>7 Q. Have you ever assisted a company in 8 developing a cosmetic?</p> <p>9 A. No.</p> <p>10 Q. Have you ever assisted a company in 11 testing a cosmetic?</p> <p>12 A. No.</p> <p>13 Q. Have you ever assisted a company in 14 manufacturing a cosmetic product?</p> <p>15 A. No.</p> <p>16 Q. Have you ever assisted a company in 17 marketing a cosmetic?</p> <p>18 A. Personally, no. My mom was involved 19 in some cosmetic advertising decades ago.</p> <p>20 Q. Have you ever been involved in a 21 company's analysis of safety data regarding a 22 cosmetic?</p> <p>23 A. No.</p> <p>24 Q. Have you ever advised a company</p> |
| <p>1 A. I have had a lot of contact over the 2 years with the Robert Wood Johnson Foundation, and 3 I've been a recipient of at least one of their 4 grants, but I have not -- I haven't been hired by 5 a corporate entity having anything to do with 6 Johnson & Johnson.</p> <p>7 Q. Does Johnson & Johnson still -- 8 strike that.</p> <p>9 Does Johnson & Johnson still sell 10 Shower to Shower?</p> <p>11 A. I don't know.</p> <p>12 Q. You are not an expert in how a 13 cosmetic company operates, correct?</p> <p>14 DR. THOMPSON: Object to form.</p> <p>15 THE WITNESS: I am an expert 16 in how a lot of companies operate. What 17 is particular to a cosmetic company I 18 couldn't say, but I have corporate law 19 practice experience. I have corporate 20 law teaching experience. I have 21 securities law teaching experience.</p> <p>22 And my mother spent her career 23 doing fashion advertising. So I suspect 24 I know a fair amount about corporate</p> | <p>Page 43</p> <p>1 about the testing needed to show the safety of a 2 cosmetic?</p> <p>3 A. No.</p> <p>4 Q. Have you ever assisted a company in 5 communicating with the FDA about a cosmetic?</p> <p>6 A. No.</p> <p>7 Q. Have you ever drafted a warning for 8 a cosmetic?</p> <p>9 A. No.</p> <p>10 Q. Have you ever -- have you ever 11 advised a cosmetic company about the need for a 12 warning on a cosmetic?</p> <p>13 A. No.</p> <p>14 Q. Have you ever worked with a company 15 on developing a warning for a cosmetic?</p> <p>16 A. No.</p> <p>17 Q. Have you ever drafted -- strike 18 that. I asked you that.</p> <p>19 Have you ever communicated with a 20 company about the cosmetic regulations?</p> <p>21 A. No.</p> <p>22 Q. Have you ever been employed by a 23 company in any capacity?</p> <p>24 DR. THOMPSON: Object to form.</p> |

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| <p>1 THE WITNESS: I'm not exactly 2 sure what you're asking, I mean. 3 BY MR. HEGARTY: 4 Q. It's as broad as it can be. 5 Have you ever worked for a company? 6 A. I mean, a law firm is a -- is a 7 company. So yes. (Laugh). 8 Q. Have you ever worked for a company 9 outside of O'Melveny? 10 A. I worked -- I was a summer associate 11 at Davis Polk and Wardwell. (Laugh). 12 Q. Fair enough. 13 You've never worked for FDA, 14 correct? 15 A. Correct. Oh, and, again, not a 16 company, but I -- I was a full-time federal 17 employee briefly in 1993 with the White House. 18 Q. But you never worked for FDA, 19 correct? 20 A. Correct. 21 Q. Have you ever worked for a 22 governmental agency? 23 A. Again I worked -- 24 DR. THOMPSON: Object to form.</p> | <p>Page 46</p> <p>1 administrative agency, correct. 2 Q. You've never communicated with 3 anyone at FDA regarding a cosmetic, correct? 4 A. Correct. 5 Q. You've never served on any FDA 6 committees, correct? 7 A. Ever served on an FDA committee. 8 Correct. 9 Q. FDA has never contacted you about a 10 cosmetic, correct? 11 A. Correct. 12 Q. You've never worked with Health 13 Canada, correct? 14 A. Correct. 15 Q. You've never worked with any foreign 16 regulatory agency, correct? 17 A. It's a good question. 18 I have been an invited speaker and 19 conference participant in, you know, several 20 countries that involved health policy agencies, 21 health insurance agencies. I have had many 22 discussions over the years. I haven't worked on 23 discrete projects with them in a sustained way. 24 Q. You're not an expert in Canadian</p> |
| <p>Page 47</p> <p>1 THE WITNESS: I worked in the 2 White House in 1993 as a full-time 3 employee and, you know, with a clearance 4 and with a lot of connections with the 5 federal government. 6 I work extensively with state 7 governments on various issues from time 8 to time. I provide informal advice to 9 people in federal health agencies, in 10 self-regulatory organizations. It's what 11 I do. I mean, this is a career of this. 12 BY MR. HEGARTY: 13 Q. Understood. Let me ask it a 14 different way. 15 You've never been employed by a 16 governmental agency, correct? 17 DR. THOMPSON: Object to form. 18 THE WITNESS: Other than the 19 White House, no. 20 BY MR. HEGARTY: 21 Q. But you know government being the 22 job you had at the White House was not with an 23 agency, right? 24 A. It was not with a federal</p> | <p>Page 49</p> <p>1 cosmetic regulations, correct? 2 DR. THOMPSON: Object to form. 3 THE WITNESS: Correct. 4 BY MR. HEGARTY: 5 Q. You've never communicated directly 6 with Health Canada, correct? 7 A. Correct. 8 Q. You cannot cite to me a single 9 cosmetic -- you cannot cite to me a single 10 Canadian cosmetic regulation, can you? 11 DR. THOMPSON: Object to form. 12 THE WITNESS: Can I cite? 13 No. But my habit is always to look 14 things up. So I don't cite very much. 15 Have I now read a little about Canadian 16 cosmetic regulation? Yes, but I don't -- 17 I don't know chapter and verse. 18 BY MR. HEGARTY: 19 Q. Have you ever read the Canadian 20 cosmetic regulations? 21 A. No. 22 Q. Have you ever referenced in any 23 publication of yours a Canadian regulation 24 regarding cosmetics?</p> |

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| <p>1 A. Regarding cosmetics? No.</p> <p>2 Q. Have you ever referenced in any</p> <p>3 publication of yours a finding by Health Canada?</p> <p>4 DR. THOMPSON: Object to form.</p> <p>5 THE WITNESS: I don't believe</p> <p>6 so.</p> <p>7 BY MR. HEGARTY:</p> <p>8 Q. Do you claim to be an expert in</p> <p>9 Health Canada's risk assessment process?</p> <p>10 DR. THOMPSON: Object to form.</p> <p>11 THE WITNESS: I have read</p> <p>12 their weight of evidence documents, which</p> <p>13 are compatible with documents elsewhere,</p> <p>14 and I've worked on harmonization efforts</p> <p>15 involving drug approval regulations</p> <p>16 involving many countries, including the</p> <p>17 Canadian system, but I don't know what</p> <p>18 more than that I could -- I could offer.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. Well, with regard to the Canadian</p> <p>21 risk assessment process, the only document you've</p> <p>22 read about that is the 2001 Canadian FSAR,</p> <p>23 correct?</p> <p>24 DR. THOMPSON: Object to form.</p> | <p>Page 50</p> <p>1 FSAR for talc, correct?</p> <p>2 A. Again, I am not great with acronyms.</p> <p>3 If you want to show me?</p> <p>4 Q. Sure.</p> <p>5 A. It may be in my binder, but I just</p> <p>6 want to make sure I'm looking at the right thing.</p> <p>7 MR. HEGARTY: I'll show you a</p> <p>8 copy of it, and I'll mark as an exhibit.</p> <p>9 (Document marked for</p> <p>10 identification as Sage Exhibit 2.)</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. I'm marking as Exhibit No. 2 the</p> <p>13 screening assessment by --</p> <p>14 A. Yeah.</p> <p>15 Q. -- Health Canada for talc that's</p> <p>16 dated April 21 -- April 2021.</p> <p>17 And you have read this document,</p> <p>18 correct?</p> <p>19 A. Yes, I have -- I have reviewed this</p> <p>20 document, which means reading much of it. Did I</p> <p>21 read every word? Probably not.</p> <p>22 Q. And you mentioned before that you</p> <p>23 had not read it prior to being contacted by</p> <p>24 counsel for plaintiffs in this case?</p> |
| <p>1 THE WITNESS: I would have to</p> <p>2 look at what exactly the document you --</p> <p>3 I've read -- I thought it was a</p> <p>4 considerably more recent document on</p> <p>5 weight of evidence explaining how they do</p> <p>6 their risk assessment, what evidence, you</p> <p>7 know, is -- is incorporated, what might</p> <p>8 not be.</p> <p>9 I'm familiar with risk</p> <p>10 assessment documents for many contexts,</p> <p>11 whether European precautionary principle</p> <p>12 documents or, you know, U.S.</p> <p>13 cost-effectiveness, cost-benefit</p> <p>14 executive order type economic analysis</p> <p>15 regulation documents. I don't know the</p> <p>16 ins and outs of them. I have a good</p> <p>17 familiarity with how the system works.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. Have you read anything about Health</p> <p>20 Canada's risk assessment as it relates to talc</p> <p>21 before being contacted by plaintiffs' counsel in</p> <p>22 this case?</p> <p>23 A. No.</p> <p>24 Q. And you have read the Health Canada</p> | <p>Page 51</p> <p>1 A. That's correct.</p> <p>2 Q. Do you know who wrote this document?</p> <p>3 A. No.</p> <p>4 Q. Do you know who was involved in</p> <p>5 analyzing the data in putting this document</p> <p>6 together?</p> <p>7 A. As individuals, no. I would assume</p> <p>8 that Health Canada is at governmental level</p> <p>9 responsible for the assessments they issue.</p> <p>10 Q. Do you know the expertise of anyone</p> <p>11 involved in putting Exhibit No. 2 together?</p> <p>12 A. I can make inferences, but, no.</p> <p>13 Q. Did you submit any material as part</p> <p>14 of this Health Canada process that led to Exhibit</p> <p>15 No. 2?</p> <p>16 A. No.</p> <p>17 Q. Did you or have you communicated</p> <p>18 with Health Canada regarding this assessment?</p> <p>19 A. No.</p> <p>20 Q. Did you know Health Canada was even</p> <p>21 doing an assessment about talc prior to being</p> <p>22 contacted by plaintiffs' counsel in this case?</p> <p>23 A. No.</p> <p>24 Q. Do you recall from reading Exhibit</p> |

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| <p>1 No. 2 that it references as part of its reliance 2 materials expert reports from U.S. litigation? 3 A. I don't recall anything about the 4 references in this report. 5 Q. Well, if you turn to, for example, 6 page 55 of this report that we marked as Exhibit 7 No. 2 -- 8 A. Uh-huh. 9 Q. -- and four lines up from the bottom 10 of that page, there's a reference -- let me -- 11 that's not the right one. I'll find the one I 12 want to reference you to. 13 Okay. If you go to page 62. I'm 14 sorry. Two lines up from the bottom, there's a 15 reference to a Rule 26 expert report of Judith 16 Wolf from 2018. 17 Do you see that? 18 A. I do. 19 Q. Had you noted that before I pointed 20 that out to you right now? 21 A. No. 22 The one you referenced earlier on 23 page 55, the McTiernan, reminded me that I did 24 review Congressional testimony as part of learning</p> | <p>Page 54</p> <p>1 plaintiff experts? 2 A. I didn't know that but -- 3 Q. Okay. 4 A. -- I'll take your word for it. 5 Q. Can you cite for me any time FDA has 6 cited to litigation expert reports in publishing a 7 safety finding? 8 DR. THOMPSON: Object to form. 9 THE WITNESS: That is exactly 10 the sort of question I would research 11 before offering a view on. 12 BY MR. HEGARTY: 13 Q. Do you know if Health Canada has 14 ever in any safety assessment cited expert reports 15 from U.S. litigation? 16 DR. THOMPSON: Object to form. 17 THE WITNESS: I'm not aware 18 of that, but this is the research 19 process. I don't give casual reads on 20 complicated facts. I look things up. 21 BY MR. HEGARTY: 22 Q. In any published article of yours, 23 have you ever cited an expert report from a 24 litigation?</p> |
| <p>1 about these issues -- 2 Q. Okay. 3 A. -- and formulating my opinions. 4 Q. And if you go over to page 59, do 5 you see about five lines down from the top and 6 about another five lines down, there's a reference 7 to an expert report by Jack Siemiatycki and a 8 reference to an expert report by Rebecca 9 Smith-Bindman? 10 Do you see that? 11 A. Yes. 12 Q. Do you see that those reports are in 13 the same case in which your expert report was 14 filed, the United States District Court for the 15 District of New Jersey MDL? 16 A. Yes. I also see one in between the 17 two. Actually, I see a couple including those 18 there. 19 Q. Yes. 20 Dr. Singh. You see that? 21 A. Yes. 22 Q. And a Dr. Ellen Blair Smith? 23 A. Yes. 24 Q. You understand that those are all</p> | <p>Page 55</p> <p>1 A. Not to my -- not to my knowledge, 2 but it's possible. 3 Q. Do you -- don't you find it unusual 4 that a governmental agency would cite to a 5 litigation report as part of its reliance 6 material? 7 A. I don't find -- 8 DR. THOMPSON: Object to form. 9 THE WITNESS: I don't find it 10 in the least unusual. One takes 11 information where one gets it. One 12 weighs its importance, its reliability. 13 If I were -- if I were 14 advising a risk assessment body, I would 15 not put blanket exclusions on what it 16 considers. 17 BY MR. HEGARTY: 18 Q. You're familiar with IARC? 19 A. Briefly, yes. 20 Q. Okay. Did you have any awareness of 21 IARC prior to being contacted by plaintiffs' 22 counsel in this case? 23 A. I'd seen -- 24 DR. THOMPSON: Object to form.</p> |

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| <p>1 THE WITNESS: I had seen the 2 acronym. I knew there was such a body. 3 I hadn't read any of their specific 4 assessments.</p> <p>5 MR. HEGARTY: Mark as Exhibit 6 No. 3 a copy of the curriculum vitae of 7 yours that we were provided in this 8 litigation.</p> <p>9 (Document marked for 10 identification as Sage Exhibit 3.)</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. Would you look at that document and 13 tell me whether this is your current curriculum 14 vitae.</p> <p>15 A. (Reviews document.)</p> <p>16 This is not the most recent version. 17 I think I was asked to provide an update that 18 included the GW visit, which is how I'm judging 19 it --</p> <p>20 Q. Okay.</p> <p>21 A. -- and this doesn't include that.</p> <p>22 Q. Did you bring a copy of your updated 23 curriculum vitae?</p> <p>24 A. Yes.</p> | <p>1 articles that are now either published or 2 in the works that weren't listed before.</p> <p>3 MR. HEGARTY: If you could at 4 a break get us a copy -- get me a copy of 5 that, I would appreciate that. And I'll 6 come back and just mark that as an 7 exhibit.</p> <p>8 BY MR. HEGARTY:</p> <p>9 Q. Dr. Sage, do you understand that 10 we're here today to take your deposition in the 11 case of In re: Johnson & Johnson Talc Litigation 12 MDL, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Who are the Johnson & Johnson 15 companies in this case?</p> <p>16 A. Again, I have not reviewed the case 17 file in a litigation posture.</p> <p>18 My understanding is that Johnson & 19 Johnson's consumer subsidiary is the focal 20 defendant. I don't recall whether the Johnson & 21 Johnson parent is also named. What little I know 22 of litigation would suggest that many parties are 23 named.</p> <p>24 Q. You did mention the consumer</p> |
| <p>1 Q. Do you have it with you?</p> <p>2 A. Yes, I think -- well, I think -- let 3 me see. I definitely do. Let me see what...</p> <p>4 MR. HEGARTY: Well, we can 5 come back. Can I get a copy of that when 6 we have a break if you don't have it?</p> <p>7 DR. THOMPSON: I believe 8 that --</p> <p>9 MS. PARFITT: I thought that 10 was given to you.</p> <p>11 DR. THOMPSON: -- was given to 12 you in the production but...</p> <p>13 MR. HEGARTY: Okay. The one I 14 had brought with me that I had asked 15 folks to give me is the one I marked as 16 Exhibit No. 3.</p> <p>17 THE WITNESS: Yeah. So --</p> <p>18 MS. PARFITT: We can check and 19 substitute it.</p> <p>20 MR. HEGARTY: Okay.</p> <p>21 DR. THOMPSON: But I believe 22 the only change was his current position 23 at GW so...</p> <p>24 THE WITNESS: And a couple of</p> | <p>1 Page 59</p> <p>1 company. There's Johnson & Johnson Consumer, Inc.</p> <p>2 Do you know when that company came 3 into existence?</p> <p>4 A. No.</p> <p>5 Q. Did you break down for purposes of 6 your report any analysis looking at the activities 7 between Johnson & Johnson and Johnson & Johnson 8 Consumer, Inc.?</p> <p>9 DR. THOMPSON: Object to form.</p> <p>10 THE WITNESS: I did in -- in 11 my report. I was very interested in how 12 the Johnson & Johnson companies were 13 organized in terms of what regulated 14 products they produced, not just 15 cosmetics, but drugs, medical devices, 16 and the like and so, you know, I at a 17 high level of generality reviewed the 18 organizations.</p> <p>19 And I think at some point, 20 there is a paragraph here that points out 21 Johnson & Johnson's umbrella expertise 22 and which subsidiaries have which 23 divisions. All of which I thought was 24 interesting as it related to their</p> |

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| <p>1 regulatory experience and obligations.</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. But in terms of the analysis that</p> <p>4 you prepared across your report, did you break</p> <p>5 down the analysis as between the Johnson & Johnson</p> <p>6 and Johnson & Johnson Consumer, Inc. companies?</p> <p>7 DR. THOMPSON: Object to form.</p> <p>8 THE WITNESS: No, I don't have</p> <p>9 the specific details to explain that</p> <p>10 functionally, and as you well know in</p> <p>11 terms of legal accountability, the</p> <p>12 functional assignment and legal</p> <p>13 accountability are not always the same.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. When were you first contacted about</p> <p>16 serving as an expert in this case?</p> <p>17 A. Probably sometime in May of 2021.</p> <p>18 Q. Who contacted you?</p> <p>19 A. Dr. Margaret Thompson.</p> <p>20 Q. How was this contact made?</p> <p>21 A. Possibly e-mail, possibly telephone,</p> <p>22 possibly incidental to a general catch-up</p> <p>23 conversation.</p> <p>24 Q. Do you recall getting e-mails from</p> | <p>Page 62</p> <p>1 DR. THOMPSON: And I would</p> <p>2 claim that those e-mails are privileged</p> <p>3 as --</p> <p>4 MR. HEGARTY: I understand.</p> <p>5 DR. THOMPSON: -- a discussion</p> <p>6 of serving as an expert.</p> <p>7 MR. HEGARTY: Understood.</p> <p>8 BY MR. HEGARTY:</p> <p>9 Q. When was it that you agreed to serve</p> <p>10 as an expert witness in relation to the first</p> <p>11 contact?</p> <p>12 A. Within a month.</p> <p>13 Q. Apart from anything that you were</p> <p>14 told by the attorneys during your communications,</p> <p>15 do you know how they came to contact you?</p> <p>16 DR. THOMPSON: Object to form.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. How Ms. Thompson -- Dr. Thompson</p> <p>19 came to contact you?</p> <p>20 A. No.</p> <p>21 Q. Do you have any social or business</p> <p>22 relationship to Dr. Thompson?</p> <p>23 A. Yes. Dr. Thompson is one of my</p> <p>24 former law students at the University of Texas,</p> |
| <p>1 ¹ Ms. Thompson -- Dr. Thompson prior to --</p> <p>2 A. Thank you.</p> <p>3 Q. -- about potentially serving as an</p> <p>4 expert witness before you agreed to serve as an</p> <p>5 expert?</p> <p>6 A. I'm sure there are e-mails that</p> <p>7 discuss it in some -- in some degree because I</p> <p>8 don't solicit expert witness work, and it was</p> <p>9 important to me to understand both the</p> <p>10 relationship between my regulatory expertise and</p> <p>11 this matter and, you know, where my analysis was</p> <p>12 likely to lead before I would agree to become an</p> <p>13 expert witness.</p> <p>14 Q. Do you still maintain those e-mails?</p> <p>15 A. I'm sure they exist, as all e-mails</p> <p>16 exist.</p> <p>17 MR. HEGARTY: Well, we would</p> <p>18 ask you to retain those e-mails, and we</p> <p>19 will make a request for a copy of any</p> <p>20 e-mails that were generated prior to Dr.</p> <p>21 Sage agreeing to serve as an expert</p> <p>22 witness.</p> <p>23 DR. THOMPSON: And -- sorry.</p> <p>24 MR. HEGARTY: Go ahead.</p> | <p>Page 63</p> <p>1 and I taught her in more than one class and she</p> <p>2 was a great student.</p> <p>3 Q. What years did you teach her at the</p> <p>4 law school?</p> <p>5 A. I would have forgotten exactly what</p> <p>6 years, but I was reminded that I think it was 2004</p> <p>7 or thereabouts. So probably 2004/2005 or so.</p> <p>8 Q. Have you maintained any type of</p> <p>9 social relationship with Dr. Thompson since you</p> <p>10 taught her in law school?</p> <p>11 DR. THOMPSON: Object to form.</p> <p>12 THE WITNESS: I've maintained</p> <p>13 the sorts of relationship I would have</p> <p>14 with former students and, you know,</p> <p>15 because Dr. Thompson and my family have</p> <p>16 moved in similar social circles in Austin</p> <p>17 during this time, we will run into each</p> <p>18 other from time to time.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. Would you -- would you call</p> <p>21 Dr. Thompson a friend apart from your work on this</p> <p>22 case?</p> <p>23 A. Yes, definitely.</p> <p>24 Q. Had you known any of the other</p> |

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| <p>Page 66</p> <p>1 lawyers for the plaintiffs in which you have 2 worked on on this case prior to your working with 3 them?</p> <p>4 A. No. Since you said for the 5 plaintiffs, that would exclude John Beisner.</p> <p>6 Q. Correct.</p> <p>7 Had you had any working relationship 8 with Dr. Thompson prior to her contacting you 9 about potentially serving as an expert in this 10 case?</p> <p>11 A. We had had informal conversations 12 over the years about various things of the sorts 13 that I will routinely have with my former 14 students.</p> <p>15 Q. Give me an example.</p> <p>16 A. She would be working on vaginal mesh 17 litigation, and we would have a discussion of 18 vaginal mesh.</p> <p>19 Q. In what sense of a discussion would 20 you have?</p> <p>21 A. I can't recall.</p> <p>22 Q. Okay. Does your wife have a social 23 relationship with Dr. Thompson?</p> <p>24 A. Former wife. We're divorced.</p> | <p>Page 68</p> <p>1 A. Yes. She had some involvement in 2 the first campaign. I don't remember exactly for 3 how long.</p> <p>4 Q. When was that involvement?</p> <p>5 A. I don't exactly recall. She -- she 6 helped Karen with some of the earliest fundraising 7 activities. I don't know the details or don't 8 remember them.</p> <p>9 Q. This would have been at a time that 10 you were still married, correct?</p> <p>11 A. Yes, this would have been in 2010.</p> <p>12 Q. Do you know Dr. Ellen Smith?</p> <p>13 A. I'm sorry. Ellen with an E?</p> <p>14 Q. Yes.</p> <p>15 A. Common name, but I don't think I do.</p> <p>16 Q. Do you know her husband, Dr. Alan 17 Campion?</p> <p>18 A. Also a name I think I have heard; 19 but, no, not personally.</p> <p>20 Q. Do you know Thomas Dydek?</p> <p>21 A. So Dydek is -- is Dr. Thompson's -- 22 one of Dr. Thompson's sons' names, and I taught 23 one of Dr. Thompson's sons at Harvard Law School.</p> <p>24 They're actually the only mother/son combination I</p> |
| <p>Page 67</p> <p>1 Q. What's her name?</p> <p>2 A. Karen Sage.</p> <p>3 Q. She's a judge, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Does Judge Sage have a social 6 relationship to your knowledge with Dr. Thompson?</p> <p>7 A. Yes.</p> <p>8 Q. Has she had any working relationship 9 with Dr. Thompson?</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. Has Dr. Thompson or her firm ever 12 donated to your wife's campaign?</p> <p>13 DR. THOMPSON: Object to form.</p> <p>14 THE WITNESS: I don't know 15 that for a fact. I would imagine that 16 Dr. Thompson did donate to -- to my 17 former wife's first campaign, but I have 18 no recollection of specifics, and I 19 certainly know nothing about subsequent 20 campaigns.</p> <p>21 BY MR. HEGARTY:</p> <p>22 Q. Do you know if Dr. Thompson has 23 had -- ever had any involvement in any of your 24 wife's political campaigns?</p> | <p>Page 69</p> <p>1 recall teaching in my career.</p> <p>2 Q. Do you know if any attorney for the 3 plaintiffs in this case besides perhaps 4 Dr. Thompson ever donated any money to your wife's 5 campaign?</p> <p>6 A. I have no knowledge of that.</p> <p>7 Q. Prior to being -- to agreeing to 8 serve as an expert witness in this litigation, did 9 attorneys for plaintiff tell you anything about 10 the litigation?</p> <p>11 A. Yeah.</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 THE WITNESS: Well, yes.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. What did they tell you?</p> <p>16 DR. THOMPSON: And I'm going 17 to instruct you not to answer what we 18 told you about the litigation.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. Okay. Prior to agreeing to serve as 21 an expert witness, did counsel for plaintiffs show 22 you any documents?</p> <p>23 A. Yes, in that I think I specifically 24 asked for the most recent court ruling, one of the</p> |

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| <p>Page 70</p> <p>1 Daubert causation type rulings. I thought that 2 would give me some of the -- the background I 3 needed to evaluate the overall litigation and 4 whether my particular expertise would be relevant 5 and appropriate.</p> <p>6 Q. I want to make this clear if it's 7 not.</p> <p>8 Was there a time before you had 9 agreed -- was there a time between the first 10 contact that you had with Dr. Thompson and you 11 actually agreeing to serve as an expert witness?</p> <p>12 A. Absolutely. There was a long period 13 of time that I had to understand how my expertise 14 fit with this litigation, understand what I 15 thought about the defendants' conduct and 16 compliance or noncompliance with regulation. 17 Yeah, I thought very seriously about it.</p> <p>18 Q. And during that period of time, did 19 you -- did you -- let me back up.</p> <p>20 Did you ultimately bill any of the 21 time you spent doing that to the plaintiffs' 22 counsel after agreeing to serve as an expert 23 witness?</p> <p>24 A. Certainly not.</p> | <p>Page 72</p> <p>1 discussions, she referred to what had happened 2 with the case recently, including the Daubert 3 ruling, and as you might imagine given my career, 4 I like to read things and see for myself, and so I 5 wanted that document.</p> <p>6 Q. Had you heard of lawsuits involving 7 talc and ovarian cancer before being contacted by 8 Dr. Thompson?</p> <p>9 A. Yeah, certainly.</p> <p>10 Q. And where had you heard of those 11 lawsuits?</p> <p>12 A. In my, you know, daily and weekly 13 health law litigation, professional 14 responsibility, tort liability, e-mail and news 15 feeds, and the things I read professionally on a 16 routine basis.</p> <p>17 Q. And how much had you read, whether 18 you do it by volume or time, spent about cases or 19 litigation involving talcum powder use and ovarian 20 cancer before being contacted by Dr. Thompson?</p> <p>21 A. It had been infrequent. I would -- 22 I would, you know, see this type of multidistrict 23 or multi-plaintiff litigation referred to the same 24 way I'd seen other cases referred to. It didn't</p> |
| <p>Page 71</p> <p>1 DR. THOMPSON: Object to form.</p> <p>2 THE WITNESS: Certainly not.</p> <p>3 I, frankly, bill minimally for these 4 things.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. And during this period of time, did 7 you consider yourself as being a retained expert 8 for the plaintiffs?</p> <p>9 DR. THOMPSON: Object to form.</p> <p>10 THE WITNESS: I considered 11 myself being asked to consider being an 12 expert. I was -- this was in the context 13 of being asked to serve as an expert.</p> <p>14 Did I consider myself already 15 aligned with the plaintiffs' position? 16 Certainly not. I was making an 17 independent decision.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. You mentioned that you requested the 20 Daubert ruling.</p> <p>21 Had you heard of the Daubert ruling 22 before being contacted by plaintiffs' counsel?</p> <p>23 A. Before being contacted by</p> <p>24 Dr. Thompson, no. But in part of those</p> | <p>Page 73</p> <p>1 particularly attract my attention, but I certainly 2 would read it. It was important.</p> <p>3 Q. And you mentioned the Daubert 4 ruling.</p> <p>5 What other documents did you review 6 between the time you were contacted by 7 Dr. Thompson and when you were -- you agreed to 8 serve as an expert as you were doing this 9 evaluation yourself?</p> <p>10 A. That's the -- that's the document 11 that the plaintiffs' lawyers provided that I 12 remember at the moment. I did not ask for or 13 receive any corporate or confidential documents.</p> <p>14 And I think what I did with respect to the talc 15 litigation was more of the Google search of what 16 might have happened recently and what I would see.</p> <p>17 And then I thought it worth 18 reviewing the basics of -- of cosmetics regulation 19 again to refresh my understanding of how the 20 cosmetics piece fit in the larger FDA scheme.</p> <p>21 Q. And prior to being contacted by 22 counsel for plaintiffs, Dr. Thompson, had you 23 formed any opinions about with regard to 24 litigation involving talcum powder use and</p> |

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| <p>1 allegations of ovarian cancer?</p> <p>2 A. No.</p> <p>3 Q. You were ultimately hired as an</p> <p>4 expert witness in this case; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. The lawyers for the plaintiffs paid</p> <p>7 you to review materials and then offer opinions,</p> <p>8 right?</p> <p>9 A. Correct.</p> <p>10 Q. Those opinions were ultimately set</p> <p>11 out in your July 2, 2020 -- 2021 MDL report; is</p> <p>12 that correct?</p> <p>13 A. Correct.</p> <p>14 Q. And that is the report we marked as</p> <p>15 Exhibit No. 1; is that right?</p> <p>16 I'm sorry, not Exhibit No. 1. Let</p> <p>17 me back up. I don't think I marked it.</p> <p>18 A. I don't think you marked it yet</p> <p>19 either but I --</p> <p>20 Q. Yes. Let me go ahead and mark that.</p> <p>21 A. I have a copy of it in front of me.</p> <p>22 MR. HEGARTY: So let me mark</p> <p>23 your July 2, 2021 MDL report as Exhibit</p> <p>24 No. 4.</p> | <p>Page 74</p> <p>1 materials, additional sort of building my</p> <p>2 knowledge of the facts and circumstances.</p> <p>3 Q. Are you able to break down the hours</p> <p>4 that you have spent since your last invoice on how</p> <p>5 much time you spent preparing for this deposition?</p> <p>6 A. Not off the top of my head. I do</p> <p>7 keep, you know, notes of -- of hours per day in a</p> <p>8 general sense of what I'm spending them on. So,</p> <p>9 yes, I could -- I could break that out.</p> <p>10 Q. Do you have --</p> <p>11 A. I would think it should be the</p> <p>12 majority of the 40 hours because this was the</p> <p>13 focal point, and we've rescheduled a little and</p> <p>14 it's, you know.</p> <p>15 Q. Have you spoken with any of your</p> <p>16 colleagues at work about your work on this case?</p> <p>17 A. No.</p> <p>18 Q. Have you told any of them -- any of</p> <p>19 the colleagues that you have at work -- about your</p> <p>20 opinions in this case?</p> <p>21 A. No.</p> <p>22 Q. Have you told any of the</p> <p>23 gynecologists and gynecologic oncologists at the</p> <p>24 University of Texas Dale Medical School of your</p> |
| <p>1 (Document marked for</p> <p>2 identification as Sage Exhibit 4.)</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. And would you confirm for me that</p> <p>5 Exhibit No. 4 is a copy of your July 2, 2021</p> <p>6 expert report?</p> <p>7 A. Yes, confirmed.</p> <p>8 Q. And your invoice that we marked</p> <p>9 previously sets out the hours you spent reviewing</p> <p>10 materials in connection with your work to prepare</p> <p>11 the report, correct?</p> <p>12 A. Yes.</p> <p>13 Q. It also sets out the time you spent</p> <p>14 drafting the report, right?</p> <p>15 A. Yes.</p> <p>16 Q. And with regard to this deposition</p> <p>17 that we're here today to do, how many -- how much</p> <p>18 time did you spend preparing for this deposition?</p> <p>19 A. Again, I think I -- when you asked</p> <p>20 earlier about accrued but unbilled time, I said I</p> <p>21 think there's about 40 hours, not including today,</p> <p>22 that have accrued between the filing of this</p> <p>23 report and now. That wasn't all preparation for</p> <p>24 the deposition. It was additional review of</p> | <p>Page 75</p> <p>1 opinions?</p> <p>2 A. No.</p> <p>3 Q. How about those same doctors at</p> <p>4 McGovern Medical School? Have you talked to</p> <p>5 them --</p> <p>6 A. Which is --</p> <p>7 Q. -- about your opinions?</p> <p>8 A. I'm sorry. You would have to remind</p> <p>9 me what McGovern Medical School is.</p> <p>10 Q. Okay. You don't know what that is?</p> <p>11 A. There -- there have been McGovern</p> <p>12 names involved in some of the University of Texas</p> <p>13 areas, but I don't actually know.</p> <p>14 Q. Well, let me ask in a broader sense.</p> <p>15 Have you spoken to any gynecologist</p> <p>16 or gynecologic oncologist at any UT healthcare</p> <p>17 facilities about your opinions in this case?</p> <p>18 A. No.</p> <p>19 Q. Have you told any doctors treating</p> <p>20 patients for ovarian cancer about your opinions in</p> <p>21 this case?</p> <p>22 A. No.</p> <p>23 Q. Have you told anyone at FDA about</p> <p>24 your opinions?</p> |

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| <p>1 A. Not yet, but I'm -- I haven't seen 2 people yet in DC, and should I see people, I will 3 be interested in discussing this with them.</p> <p>4 Q. Do you currently have plans to 5 submit your report or otherwise communicate with 6 FDA about your opinions in this case?</p> <p>7 A. I -- part of what I do routinely is 8 work with government agencies, with legislators 9 federal and state and, yes, I'm sufficiently 10 concerned about some of the things that I've 11 reached conclusions about in connection with this 12 report that, yes, I intend to talk to people.</p> <p>13 I suspect I more like to talk -- 14 more likely to talk to Congressional staffers than 15 I am to FDA people because I think I'm more likely 16 to be in contact with those people.</p> <p>17 Q. Have you communicated with anyone as 18 of today outside of plaintiffs' lawyers about your 19 report?</p> <p>20 A. No.</p> <p>21 Q. Have you discussed this litigation 22 or your report with any other experts that have 23 been identified by the plaintiffs in the MDL case?</p> <p>24 A. No.</p> | <p>1 of this housekeeping matter.</p> <p>2 You brought some materials with you 3 here today; is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. The notebook sitting in front of 6 you?</p> <p>7 A. Yes.</p> <p>8 Q. Is that a notebook you put together?</p> <p>9 A. No.</p> <p>10 Q. Who put it together?</p> <p>11 A. The plaintiffs' lawyer.</p> <p>12 Q. Did they put it together at your 13 direction?</p> <p>14 A. I asked them to provide me with 15 things that would be helpful, as I haven't been 16 deposed in years.</p> <p>17 Q. Could you walk me through what's in 18 the notebook?</p> <p>19 A. Certainly.</p> <p>20 There's -- there's the notices of 21 deposition. There's the report with attachments. 22 My invoice was here. There's a separate copy of 23 my CV, though I noticed it was also attached to 24 the report. There's the FDA's response to the two</p> |
| <p>1 I'm very interested in what the 2 defense experts might say with respect to my 3 opinions. So if those people exist, I'll look 4 forward to reading what they -- what they think.</p> <p>5 MR. HEGARTY: I'm going to 6 mark as exhibit number -- I guess, before 7 I do that, do you want to take a break at 8 this point?</p> <p>9 MS. THOMPSON: I was just 10 thinking it's about time.</p> <p>11 MR. HEGARTY: Yeah, let's take 12 a break.</p> <p>13 DR. THOMPSON: It's a good 14 spot.</p> <p>15 MR. HEGARTY: Yeah, it's a 16 good spot. Let's go off the record.</p> <p>17 (Recess: 9:21 a.m. - 18 9:35 a.m.).</p> <p>19 MR. HEGARTY: We're back on 20 the record.</p> <p>21 BY MR. HEGARTY:</p> <p>22 Q. Doctor, when we broke, I was going 23 to show you a portion of your -- let me back up 24 before I do that. I want to make sure I take care</p> | <p>1 Citizen's Petitions from 2014. There's some IARC 2 material. There's some Health Canada material, 3 and there's your client's submission to Health 4 Canada. And then there's a little loose material.</p> <p>5 Q. What is that loose material?</p> <p>6 A. The loose material is the casebook 7 chapter on cosmetics that I cite in the report. I 8 requested specifically the most recent Senate 9 version of the Personal Care Product Safety Act 10 bill that's been introduced.</p> <p>11 There's the NCI informal statements 12 on talc and ovarian cancer and there's a small 13 acronym glossary that I asked -- that I 14 specifically asked for just to refresh my memory 15 about things like, you know, the Personal Care 16 Products Council and what things are called so 17 that I remember.</p> <p>18 And then there's this FDA internal 19 review from 1998 that actually talks about the 20 inadequacies of the CIR and actually raises 21 concerns about the safety of talc regarding 22 ovarian cancer.</p> <p>23 Q. Can I see that document, please?</p> <p>24 A. Certainly.</p> |

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| <p>1 Q. It is a document Bates number 2 PCPC058604 to 058654. 3 Is this a document you've read? 4 A. Yes. 5 Q. And then you mentioned a list of 6 acronyms. 7 Is that something the lawyers for 8 the plaintiffs prepared for you? 9 A. At my request very specifically. 10 MR. HEGARTY: Okay. Thank 11 you. 12 I mark next as Exhibit 5 a 13 portion of your expert report. 14 (Document marked for 15 identification as Sage Exhibit 5.) 16 BY MR. HEGARTY: 17 Q. And feel free to refer to that or go 18 to your expert report where that part is. 19 It is the document that you have or 20 the part of your report that has "Literature" at 21 the top of it in the upper left-hand corner. 22 Pages 1 through 18. 23 And if you could look through that 24 document and tell me whether you have read all the</p> | <p>Page 82</p> <p>1 underlying science because I actually am capable 2 of reading the underlying science, and I wouldn't 3 be comfortable with only having secondary sources 4 on the underlying science. 5 Q. With regard to this document we're 6 looking at, Exhibit No. 5, did you prepare this? 7 A. No, this was -- 8 Q. Who prepared it? 9 A. Probably Brianne with the 10 plaintiffs' lawyers. 11 Q. And with regard to the materials 12 that are listed in Exhibit No. 5, do you know how 13 the plaintiffs' lawyers went about selecting these 14 materials to send to you? What their methodology 15 was? 16 DR. THOMPSON: Object to form. 17 THE WITNESS: In many 18 instances, it was a specific request. I 19 requested a lot of the science. I 20 requested a lot of the historical 21 background for context for the science. 22 I was interested in certain 23 types -- certain of the deposition 24 testimony. I was interested in</p> |
| <p>1 material that is listed in those pages. 2 A. All the material that was in these 3 pages was made available to me. I read word for 4 word certain items that I thought were relevant 5 and important for my consideration. Other things 6 I may have looked at part of. Other things I may 7 have looked at by title. 8 And when there were statements in my 9 report that required or benefited from having 10 cross-references to litigation documents, those 11 would have been materials that plaintiffs' counsel 12 supplied for the footnoting, and some of those I 13 would not have read. 14 Q. You said made available to you, are 15 all the materials that are contained in Exhibit 16 No. 5 sent to you by counsel for the plaintiffs? 17 A. There was a Dropbox account made 18 available that I -- that I could access. Certain 19 materials were also e-mailed to me. Usually 20 things that I had either specifically asked for or 21 came out of drafts through discussions. 22 I had certain things that I was very 23 interested in in reviewing in detail. I tended to 24 ask for those, and that included a lot of the</p> | <p>Page 83</p> <p>1 legislative action. 2 I was very specifically 3 interested in the defendants' responses 4 in the defendants' case, and I repeatedly 5 asked when we're considering particular 6 questions, you know, well, what would the 7 defense say on this? 8 BY MR. HEGARTY: 9 Q. You did receive some materials from 10 the plaintiffs' counsel that you did not 11 specifically request; is that correct? 12 A. Yes. 13 Q. Do you know how as to those 14 materials the plaintiffs' lawyers went about 15 choosing what to send to you? 16 A. No, I don't know. 17 Q. And with regard to the -- or let me 18 back up. 19 Do you understand the materials that 20 we're looking at listed in Exhibit No. 5 include 21 expert reports and some expert depositions. 22 Do you recall that? 23 A. Yes. 24 Q. Are you aware that there are</p> |

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| <p>1 hundreds more expert reports and depositions from 2 the litigation, the MDL litigation, that are not 3 on this list of materials?</p> <p>4 A. I would assume that. I don't know 5 that for a fact.</p> <p>6 Q. Do you understand that this list 7 only includes two reports from defense experts, 8 Dr. Weed and Dr. Anderson.</p> <p>9 Do you understand that?</p> <p>10 A. I would have to go look through 11 this; but, yes, I will take your word for that.</p> <p>12 Q. Well, did you ask plaintiffs' 13 counsel to give you all the defense expert reports 14 and depositions?</p> <p>15 A. I did not ask for all of the 16 plaintiffs' and I did not ask for all of the 17 defense. I asked for documents that would express 18 key aspects of the defense positions.</p> <p>19 Q. Well, you --</p> <p>20 A. And I asked specifically for 21 anything that might relate to -- to the regulatory 22 analysis, of course.</p> <p>23 Q. But you would agree that you have 24 not done a comprehensive analysis of the expert</p> | <p>1 are some that go into the science and not the 2 regulatory issues, correct?</p> <p>3 A. Yes. I reviewed some science and I 4 was particularly interested in regulatory 5 materials, especially deposition testimony, and I 6 was particularly interested in marketing-related 7 materials because that goes to the informational 8 environment and the informational obligations of a 9 cosmetics manufacturer.</p> <p>10 Q. But you did not request all the 11 science reports and depositions of the defense 12 expert witnesses, correct?</p> <p>13 A. That is correct. I requested 14 specifically what might be considered the key 15 scientific studies on both sides of the question, 16 and I very emphatically requested both sides of 17 the question.</p> <p>18 Q. Did you request the key scientific 19 opinions to the reports and depositions of all the 20 witnesses, regardless on what side they are on?</p> <p>21 A. I didn't request every opinion. I 22 was more interested in the underlying published 23 scientific literature, to the extent it existed, 24 and deposition testimony that would supplement it</p> |
| <p>1 reports and depositions in the MDL, correct?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: I think I 4 considered everything I needed to 5 consider to formulate my opinions.</p> <p>6 BY MR. HEGARTY:</p> <p>7 Q. How do you know you considered 8 everything you needed to consider if you don't 9 know what others have said in reports and 10 depositions that you don't have?</p> <p>11 DR. THOMPSON: Object to form.</p> <p>12 THE WITNESS: If there's a 13 set of regulatory opinions from defense 14 experts, I would love to see them and I 15 would be happy to take account of them in 16 finalizing my views.</p> <p>17 My -- my understanding was 18 that -- having asked, was that there were 19 not defense expert reports specific to 20 regulation at this at this juncture. If 21 that's wrong, I'd love to know.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. Well, you understand that the 24 reports and depositions included in Exhibit No. 5</p> | <p>1 where you couldn't actually assess the science 2 from what had been published.</p> <p>3 Q. In your expert report, you actually 4 cite to a report by Drs. Longo and Rigler.</p> <p>5 Do you recall that?</p> <p>6 A. I do recall that.</p> <p>7 Q. Do you recall that that's the only 8 expert report that you specifically cite in the 9 body of your written report?</p> <p>10 A. As -- as I recall, that is an expert 11 report that relates to adulteration of talcum 12 powder products with asbestos, and it was 13 sufficiently important to highlight in the body of 14 the report.</p> <p>15 Q. Do you intend to rely on any other 16 expert report or deposition besides Drs. -- the 17 report of Drs. Longo and Rigler cited in the body 18 of your expert report?</p> <p>19 A. I consider --</p> <p>20 DR. THOMPSON: Object to form.</p> <p>21 THE WITNESS: I consider 22 everything. Given the nature of my 23 regulatory expertise and the fundamental 24 opinions that I'm expressing, I think</p> |

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| <p>1 it's really a question of the totality of 2 the evidence in front of me.</p> <p>3 I don't think there's any 4 single material that that I rely on in 5 the sense if you're suggesting that my 6 opinions depend only on one particular 7 report.</p> <p>8 BY MR. HEGARTY:</p> <p>9 Q. Well, there what I want to try to 10 find out is if you see a distinction between what 11 you considered and what you relied upon.</p> <p>12 A. I considered.</p> <p>13 DR. THOMPSON: Object to form.</p> <p>14 THE WITNESS: My -- it's been 15 an education to me to learn how these 16 terms are used in this type of 17 proceeding.</p> <p>18 I think one expresses the fact 19 of the matter and how I think about it is 20 that I request a lot of material. I'm 21 provided a lot of material. I consider 22 everything that I'm provided.</p> <p>23 I don't feel that any piece of 24 my opinion is driven by reliance on one</p> | <p>1 might -- might have.</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. My follow-up question to that, 4 though, is: You agree that you did not consider 5 every reference in Exhibit No. 5 as part of your 6 opinions in this case?</p> <p>7 A. I --</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: I considered 10 the materials. Did I consider every 11 sentence of material that I did not read 12 every sentence of? Of course not.</p> <p>13 BY MR. HEGARTY:</p> <p>14 Q. And there are materials in this 15 exhibit that you did not read at all, correct?</p> <p>16 DR. THOMPSON: Object to form.</p> <p>17 THE WITNESS: There are 18 materials in this exhibit that I would 19 have looked at the title of, and that 20 perhaps when I had conversations with the 21 plaintiffs' lawyers about what were the 22 key scientific studies on each side, 23 didn't fall in that category; and, 24 therefore, although they were available,</p> |
| <p>1 or a small number of documents.</p> <p>2 Where I tend to think about 3 the term "reliance" is that I'm not 4 formulating independent scientific 5 conclusions; and so if we're talking 6 about scientific judgments, then I'm 7 relying on either the published 8 literature or the opinions of the 9 scientific experts for those opinions.</p> <p>10 BY MR. HEGARTY:</p> <p>11 Q. You mentioned, though, that you take 12 into account everything that you considered, but 13 you would agree, though, that with regard to 14 Exhibit No. 5, you did not read all the materials 15 in Exhibit No. 5, correct?</p> <p>16 DR. THOMPSON: Object to form.</p> <p>17 THE WITNESS: I think you 18 asked me this before, and I think I 19 explained that things were made available 20 and I looked at everything and decided 21 what needed to be read in what detail.</p> <p>22 And I actually think I pursued 23 the detail and a lot more of the science 24 than another nonscientific expert</p> | <p>1 no, I did not read them.</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. And you agree you cannot consider 4 something for your opinions that you didn't read, 5 correct?</p> <p>6 DR. THOMPSON: Object to form.</p> <p>7 THE WITNESS: I don't agree 8 with that. I mean, I consider universe 9 of materials. Some things may or may not 10 be relevant, and some things may or may 11 not be duplicative.</p> <p>12 They're made available to me 13 and because they're made available to me, 14 my understanding is they're disclosed to 15 you, and that's the universe we're 16 discussing.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. Do you know the names of the 19 plaintiffs in the cases selected for trial in the 20 MDL?</p> <p>21 A. I do not know them. So in the MDL, 22 I don't think I know them at all.</p> <p>23 Q. Do you know anything about them, 24 where they live, what their diagnoses were, things</p> |

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| <p>1 like that?</p> <p>2 A. I know that they -- I know that at</p> <p>3 least some of them would have serous ovarian</p> <p>4 carcinomas. I don't know anything more about</p> <p>5 them.</p> <p>6 Q. How do you know that some of them</p> <p>7 had serous invasive carcinoma?</p> <p>8 A. I didn't say "invasive." I just</p> <p>9 said "ovarian," but just in the sense that I know</p> <p>10 that that's the form of ovarian cancer that's most</p> <p>11 at issue in terms of causation.</p> <p>12 Q. Do you have any knowledge of each of</p> <p>13 the plaintiffs who have been selected for trial</p> <p>14 use of baby powder?</p> <p>15 A. No, I do not.</p> <p>16 Q. Do you have any knowledge of any</p> <p>17 tissue analysis conducted for each of the</p> <p>18 plaintiffs selected for trial in the MDL?</p> <p>19 A. No, I do not.</p> <p>20 Q. As an expert in this case, you do</p> <p>21 not represent the University of Texas, correct?</p> <p>22 A. Correct.</p> <p>23 Q. You don't speak for the University</p> <p>24 of Texas, correct?</p> | <p>Page 94</p> <p>1 Q. When is the last time you practiced</p> <p>2 law?</p> <p>3 A. The last time I practiced law would</p> <p>4 have been when I was working at O'Melveny and</p> <p>5 Myers.</p> <p>6 Q. When was the last time you practiced</p> <p>7 medicine?</p> <p>8 A. Again, the last time I practiced</p> <p>9 medicine as a -- as a functional manner last time</p> <p>10 I cared for a patient in a structured clinical</p> <p>11 environment would have been when I was a resident</p> <p>12 at Johns Hopkins. However, I do have an active a</p> <p>13 Texas medical license, and I am legally entitled</p> <p>14 to practice medicine in Texas.</p> <p>15 MR. HEGARTY: I'll mark as the</p> <p>16 next exhibit, which is Exhibit No. 6, the</p> <p>17 notice for your deposition here today.</p> <p>18 (Document marked for</p> <p>19 identification as Sage Exhibit 6.)</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. And, Dr. Sage, have you seen this</p> <p>22 document before right now?</p> <p>23 A. I think I saw it briefly via e-mail.</p> <p>24 Q. Would you turn over to page 3.</p> |
| <p>1 A. Correct.</p> <p>2 Q. You're not speaking in this case for</p> <p>3 any regulatory group or agency, correct?</p> <p>4 A. Correct.</p> <p>5 Q. You're not speaking for any law or</p> <p>6 legal group, correct?</p> <p>7 A. I'm speaking for myself, expressing</p> <p>8 my own opinions. (Laugh).</p> <p>9 Q. Right.</p> <p>10 You're speaking in this case solely</p> <p>11 for yourself, correct?</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. And all the opinions in your report</p> <p>16 are your subjective opinions, correct?</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: They're my</p> <p>19 professional opinions.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. Okay. Are you licensed to practice</p> <p>22 law?</p> <p>23 A. I am an inactive member of the</p> <p>24 California and District of Columbia bars.</p> | <p>Page 95</p> <p>1 Starting on page 3, there's a list of 18</p> <p>2 paragraphs that carry over to page 9.</p> <p>3 Do you see that --</p> <p>4 A. Yeah.</p> <p>5 Q. -- that list?</p> <p>6 Have you read through those</p> <p>7 paragraphs before right now?</p> <p>8 A. No.</p> <p>9 Q. Is that something that we can have</p> <p>10 you read at a break, and then I'll ask you some</p> <p>11 questions about it as opposed to taking time on</p> <p>12 the record to -- to read?</p> <p>13 A. It's up to you, whichever is more</p> <p>14 convenient.</p> <p>15 MR. HEGARTY: Is that okay</p> <p>16 with you, Dr. Thompson?</p> <p>17 DR. THOMPSON: That's fine.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. Okay. Would you put that aside and</p> <p>20 we'll come back to that document.</p> <p>21 A. Okay.</p> <p>22 Q. With regard to the expert report</p> <p>23 that you prepared, Exhibit No. 4, have you sent</p> <p>24 that report to anyone besides counsel for the</p> |

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| <p>1 plaintiffs and, of course, them perhaps to the 2 defense counsel?</p> <p>3 A. No. My assumption was that this was 4 not material to be shared.</p> <p>5 Q. Do you have any drafts of this 6 report?</p> <p>7 A. There's always versions that 8 constitute drafts in the way that documents are 9 evolved electronically these days, but there would 10 be versions I'm sure.</p> <p>11 Q. And the reason I ask it that way is 12 sometimes you'll have a report that then is 13 drafted and is never changed -- it changes, but 14 the original version doesn't exist.</p> <p>15 Do you have any drafts that you 16 think still exist?</p> <p>17 A. Of an earlier version?</p> <p>18 Q. Version.</p> <p>19 A. Again, I'm really not sure how to 20 answer that. I, you know, I write hundreds of 21 things that end up published, and I don't know if 22 I even know my method for writing stuff anymore. 23 It just happens.</p> <p>24 Q. The report we marked as Exhibit</p> | <p>Page 98</p> <p>1 expressed, but these are the opinions.</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. That's fair.</p> <p>4 But prior to coming in here today, 5 you understood that your opinions and on what you 6 rely for those opinions was to be set out within 7 the four corners of your July 2, 2021 report?</p> <p>8 A. Yes.</p> <p>9 DR. THOMPSON: Object to form.</p> <p>10 BY MR. HEGARTY:</p> <p>11 Q. So at least coming in here today, 12 all the opinions that you intend to offer in this 13 case are those set out in your report, correct?</p> <p>14 A. Correct.</p> <p>15 DR. THOMPSON: Object to form.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. And, likewise, all the materials on 18 which you intend to rely coming in here today were 19 those referenced in your report, correct?</p> <p>20 DR. THOMPSON: Object to form.</p> <p>21 THE WITNESS: All the -- all 22 the materials that I considered in 23 generating the report are -- I don't know 24 what I'm supposed to say, you know -- are</p> |
| <p>Page 99</p> <p>1 No. 4 defines the scope of your testimony in this 2 case, correct?</p> <p>3 A. Correct.</p> <p>4 DR. THOMPSON: Object to form.</p> <p>5 THE WITNESS: The report 6 includes my opinions, and they're the 7 opinions I would plan to offer.</p> <p>8 BY MR. HEGARTY:</p> <p>9 Q. As a lawyer, you understand that 10 this report is supposed to be your testimony as if 11 you're on the stand before a judge and a jury, 12 right?</p> <p>13 A. Yes.</p> <p>14 Q. You understand that your opinions on 15 what you rely -- the opinions and what you rely 16 upon are supposed to be within the four corners of 17 this document, right?</p> <p>18 DR. THOMPSON: Object to form.</p> <p>19 THE WITNESS: I understand 20 that I might generate an opinion based on 21 our conversation today. I understand 22 that you might provide me with additional 23 material that would cause me to 24 supplement or modify an opinion I've</p> | <p>Page 101</p> <p>1 contained in the report or provided to 2 you as they're supposed to be provided. 3 I really don't know how this 4 works well enough, and I haven't done 5 this before. So I'm not sure I 6 understand all the terminology. 7 I'm, of course, as a lawyer, 8 you know, careful and want to comply with 9 all requirements.</p> <p>10 BY MR. HEGARTY:</p> <p>11 Q. With regard to the substance of your 12 report, except where you have used quotations, is 13 it your testimony that all the sentences in your 14 report are your own words and not copied from 15 others?</p> <p>16 A. I'm --</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: So to the best 19 of my knowledge, everything in the report 20 that is not in quotation or could be 21 understood as -- as an expression of 22 something in something that's immediately 23 cited, that's all original work. 24 The same -- I do this report</p> |

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| <p>1 the same way I would do any other 2 writing, you know, which includes having 3 materials drawn from various sources, 4 working with those, you know, rewriting 5 things, re-expressing things. 6 There's -- what I can say with 7 confidence is, there's not a, you know, 8 there's not a sentence or a phrase in 9 this report that I haven't had my 10 author's fingerprints on.</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. So you know that as an author that 13 the obligation is to properly cite material to 14 which you are relying or referencing, correct?</p> <p>15 DR. THOMPSON: Object to form.</p> <p>16 THE WITNESS: I think I am 17 experienced with standards for 18 publication.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. And the obligations require that 21 when you discuss, summarize, or paraphrase others 22 that you include a citation to those others' work, 23 correct?</p> <p>24 DR. THOMPSON: Object to form.</p> | <p>Page 102</p> <p>1 when, I cite and I'd be happy to share 2 them with you if you want but...</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. Well, for purposes of your report, 5 whenever you did discuss, summarize, or paraphrase 6 the work of others, did you include a cite to that 7 work by others?</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: I suspect not 10 universally, but, again, that wouldn't be 11 the standards that one would apply to a 12 lot of report writing. If you want my 13 personal standards for citation, I'll be 14 happy to share them.</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. The report -- well, let me go back 17 to Exhibit No. B -- I'm sorry -- Exhibit No. 5. 18 This is the --</p> <p>19 A. Yes.</p> <p>20 Q. -- list of literature, and if you 21 look over at page 8, there starts a number of 22 pages that include deposition and hearing 23 transcripts.</p> <p>24 Do you see that?</p> |
| <p>1 THE WITNESS: I think that 2 depends very much on the context and the 3 context in, say, an academic publication 4 or a student dissertation might be 5 somewhat different than in an internal 6 law firm memo, and the standards for 7 citation that apply to an expert report 8 are not something I have much familiarity 9 with, beyond the general standards I 10 would apply to my work.</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. But did you write your expert report 13 in a method different than what you have written 14 published articles?</p> <p>15 DR. THOMPSON: Object to form.</p> <p>16 THE WITNESS: I wrote -- I 17 wrote it the same way I would write 18 something, but the standards for 19 citation, for example, vary -- vary 20 differently between, say, a law review 21 article and a medical journal publication 22 or health policy. There's no single 23 standard for what you cite and when. 24 I have my own standards for</p> | <p>Page 103</p> <p>1 A. Yes.</p> <p>2 Q. Did you read all of the depositions 3 and hearing transcripts listed there in their 4 entirety?</p> <p>5 A. Of course not. I was astonished to 6 realize how long these depositions are. I did 7 read several.</p> <p>8 Q. Do you recall sitting today which 9 ones you read in their entirety?</p> <p>10 A. I don't recall sitting here. I 11 could tell you some familiar names such as the -- 12 I mean, I know I read in its entirety over the 13 course of several deposition days the deposition 14 testimony of Kathleen Wille. I know I read some 15 of, I think, a Susan Nicholson deposition.</p> <p>16 I know I read Koberna, which had to 17 do with marketing. And I remember reading every 18 word of a couple of the plaintiffs' experts, but 19 that was early in my work on the case, and I don't 20 really remember the details.</p> <p>21 Q. If you look over at page 10 above 22 the section Other Sources, there are some trial 23 transcripts from a case referred to as Ristesund 24 versus Johnson & Johnson.</p> |

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| <p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. Did you read the transcripts from</p> <p>4 the Ristesund trial that are referenced in this</p> <p>5 exhibit?</p> <p>6 A. Things here were made available to</p> <p>7 me. I -- I recall reading some PowerPoints in</p> <p>8 different connections in different points in what</p> <p>9 I was reviewing. I can't recall whether I read</p> <p>10 this particular transcript in any -- any detail.</p> <p>11 Q. Are you aware that there have been</p> <p>12 more than 10 trials involving claims of use of</p> <p>13 Johnson's Baby Powder and ovarian cancer?</p> <p>14 A. I'm aware there have been several</p> <p>15 trials and there are trials -- and there are</p> <p>16 trials ongoing. I don't mentally separate the</p> <p>17 state trials from the MDL trials. Again, I</p> <p>18 approach this as a regulatory expert. I don't</p> <p>19 approach this as a litigator.</p> <p>20 Q. Did you ask to see the trial</p> <p>21 transcripts in all the cases that have been tried?</p> <p>22 A. No.</p> <p>23 Q. Did you read all of the</p> <p>24 Bates-numbered documents that begin on page 12 and</p> | <p>Page 106</p> <p>1 are listed in these pages?</p> <p>2 A. Certainly.</p> <p>3 Q. Do you know of their methodology for</p> <p>4 how they selected those documents to send to you?</p> <p>5 DR. THOMPSON: Object to form.</p> <p>6 THE WITNESS: Again, I'm --</p> <p>7 I'm struggling with what you're trying to</p> <p>8 ask me. Because it seems like to me --</p> <p>9 it seems to me as if the litigators on</p> <p>10 both sides of a case like this understand</p> <p>11 a whole lot more about how the material</p> <p>12 and references get generated in</p> <p>13 litigation than I do.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. Let me ask it in a different way.</p> <p>16 Do you know how they went about</p> <p>17 choosing which Bates-numbered documents to send to</p> <p>18 you, other than those you may have asked for?</p> <p>19 DR. THOMPSON: Object to form.</p> <p>20 THE WITNESS: No, I don't.</p> <p>21 BY MR. HEGARTY:</p> <p>22 Q. And do you recall asking plaintiffs'</p> <p>23 counsel for any specific internal company</p> <p>24 documents?</p> |
| <p>Page 107</p> <p>1 carry over to page 17 -- I'm sorry -- page 18?</p> <p>2 A. No, certainly not.</p> <p>3 Q. Did you select -- did you select or</p> <p>4 ask for any of the Bates-numbered documents that</p> <p>5 are referenced on these pages?</p> <p>6 DR. THOMPSON: Object to form.</p> <p>7 THE WITNESS: I don't know --</p> <p>8 I don't know the answer to that.</p> <p>9 I approach -- I approach this</p> <p>10 the way I would approach any regulatory</p> <p>11 investigation, any analytic project.</p> <p>12 It's a slightly different set of citation</p> <p>13 practices than what one might have in law</p> <p>14 review, which, as I've said, is also very</p> <p>15 different from one would have in the</p> <p>16 medical or health policy literature,</p> <p>17 which is different from what one might</p> <p>18 have in a national academy's report; and,</p> <p>19 you know, I relied on plaintiffs' counsel</p> <p>20 to understand what the requirements and</p> <p>21 norms of this type of a report were.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. Did plaintiffs' counsel select at</p> <p>24 least some of the Bates-numbered documents that</p> | <p>Page 109</p> <p>1 A. I was -- by -- by document</p> <p>2 identification, no, because I wouldn't know what</p> <p>3 the documents were. I was very interested in</p> <p>4 documents that would relate to your client's</p> <p>5 understanding of its regulatory obligations. I</p> <p>6 was very interested in documents that would relate</p> <p>7 to your client's approach to its informational</p> <p>8 environment for consumers, which gets into the</p> <p>9 marketing and advertising space.</p> <p>10 I was very interested in your</p> <p>11 client's documents that reflected your client's</p> <p>12 best understanding of the relevant science.</p> <p>13 Beyond that, you know, the references are provided</p> <p>14 for this document, I am certainly hoping and</p> <p>15 assuming, in compliance with law and beyond, but</p> <p>16 that doesn't really go to the heart of my</p> <p>17 opinions.</p> <p>18 Q. As far as the subject areas that you</p> <p>19 just referenced in your answer to my last</p> <p>20 question, did you ask plaintiffs' counsel for all</p> <p>21 the documents that Johnson & Johnson had produced</p> <p>22 on those subject areas?</p> <p>23 DR. THOMPSON: Object to form.</p> <p>24 THE WITNESS: No. I would</p> |

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| <p>1 assume that the all -- that asking for 2 all of anything in this type of 3 litigation would take me years to review. 4 I asked for things that seemed relevant 5 and important and that were balanced and 6 reflected arguments on both sides.</p> <p>7 BY MR. HEGARTY:</p> <p>8 Q. Well, if you didn't ask for all of 9 the documents relating to the subject areas you 10 described, how do you know if you got all the 11 relevant documents on those subject areas?</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 THE WITNESS: How? (Laugh). 14 It's -- it's interesting to be asked 15 these questions because, you know, one is 16 reconstructing how one does research in 17 pretty much anything.</p> <p>18 You know, what I -- what I did 19 is, it's a -- it's an iterative process 20 as it would be for you evaluating a case. 21 You look at the different pieces of -- of 22 the case. You look at different 23 arguments and different counterarguments 24 and the underlying facts. And if you</p> | <p>Page 110</p> <p>1 materials that were provided to you, correct? 2 A. I made very specific requests of 3 plaintiffs' counsel, and I made very clear that I 4 wanted material on both sides of every question 5 and evaluated that.</p> <p>6 Q. What did you do to confirm that you 7 got material on both sides of the -- of a 8 question?</p> <p>9 DR. THOMPSON: Object to form.</p> <p>10 THE WITNESS: Well, for 11 example, you know, I spent a good amount 12 of time going through Johnson & Johnson's 13 submission to Health Canada, which 14 clearly included all of the relevant 15 science and the counterarguments to 16 science establishing a causal connection 17 between perineal talc exposure and 18 ovarian cancer.</p> <p>19 I mean, I felt like that was a 20 pretty good reflection of what the 21 defense would offer on the scientific 22 side.</p> <p>23 On the regulatory side on the 24 marketing side, there seemed to be less</p> |
| <p>1 feel like you have a sense of each of 2 what you consider the material issues, 3 you stop.</p> <p>4 You know, if you feel like you 5 have a one-sided view of five of the 6 issues, then you investigate until you 7 get the other side of those five issues. 8 And if you think you have a piece of 9 information you just -- that's just 10 missing, you pursue that.</p> <p>11 I mean, you don't -- I've 12 never ever started any project as a 13 lawyer, as a physician, as a researcher 14 as a professor where I say, give me 15 everything. That's -- that's discovery, 16 not the way I do an expert report.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. Well, that said, I mean, I have to 19 disagree that I -- that you approach it the way I 20 would approach it, which you said in your answer. 21 Because I would not approach it the way that you 22 approached it.</p> <p>23 You do agree that you relied on the 24 plaintiffs' counsel as far as some of the</p> | <p>Page 111</p> <p>1 material of it, and I did my best to 2 assemble what there was and I asked 3 repeatedly to see if there was anything 4 more.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. You mentioned a submission to Health 7 Canada. You said you have it in front of you. 8 What's the date of that submission?</p> <p>9 A. I have to go back to see. 10 (Reviews document.)</p> <p>11 Q. Well, let me ask it different. 12 Is there a beginning Bates number on 13 it?</p> <p>14 A. Well, so -- so this -- so this 15 comprehensive review document that comes from 16 Johnson & Johnson Consumer, Inc. said its current 17 as of March 17, 2020, and the Bates number is 18 P-1851.</p> <p>19 Q. Through what?</p> <p>20 A. Oh, I'm sorry. That's the exhibit 21 number.</p> <p>22 Q. What's the beginning number?</p> <p>23 A. I'm sorry.</p> <p>24 Q. What's the beginning Bates number?</p> |

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| <p>1 A. Sorry. You're speaking litigator 2 language. 3 Q. Okay. 4 A. Page 1 of 4,528. It's a long 5 document containing a lot of assessments and 6 scientific references. I'm happy to hand -- hand 7 it to you if you can. 8 Q. Yeah, I'll take a look at it. 9 There is -- 10 A. Oh, some -- yeah, I still don't know 11 what you're -- 12 DR. THOMPSON: May I point? 13 MR. HEGARTY: Sure. 14 DR. THOMPSON: He's asking for 15 the beginning Bates number. 16 THE WITNESS: Okay. That's 17 now -- now it's an eye test. All right. 18 So it ends 485273 and it goes through 19 485527. 20 BY MR. HEGARTY: 21 Q. What does it say on the top of the 22 very first page? 23 A. Top? 24 Q. What is the title?</p> | <p>Page 114</p> <p>1 A. Certainly. 2 Q. Did you read the entirety of all the 3 medical and scientific studies referenced in 4 Exhibit No. 5? 5 A. No, but I read probably between 10 6 and 20 scientific studies in their entirety. 7 Q. With regard to the scientific 8 studies that are listed in Exhibit No. 5, were all 9 of those provided to you by counsel for the 10 plaintiffs? 11 DR. THOMPSON: Object to form. 12 THE WITNESS: In other words, 13 did anyone else provide them or did I 14 find them on my own? 15 BY MR. HEGARTY: 16 Q. Correct. 17 A. They were all provided by counsel 18 for the plaintiffs. 19 Q. So the follow-up question is: Did 20 you find from your own independent review any 21 medical literature, scientific or medical 22 literature? 23 DR. THOMPSON: Object to form. 24 THE WITNESS: Interesting</p> |
| <p>Page 115</p> <p>1 A. "Attachment B Johnson's Baby Talcum 2 Powder: A Comprehensive Review 17 March 2020." 3 Q. Okay. Thank you. 4 There are Bates numbers in -- well, 5 go back to Exhibit B, Doctor. This is this 6 (indicates). 7 A. Yes. 8 Q. List of materials. 9 Do you still have that exhibit in 10 front of you? 11 A. I do. 12 Q. If you look at page 18, the very 13 last page of that set of materials, there's some 14 Bates number documents at the end listed WCD. 15 Do you know who produced those 16 documents? 17 A. No. 18 Q. Do you know if you read those 19 documents? 20 A. Not without looking at documents. 21 Q. There are a number of medical and 22 scientific studies that are included in this list 23 of material. 24 Do you see that?</p> | <p>Page 115</p> <p>1 question. 2 I'm not sure I recall. I 3 think it's -- it's fair to say that the 4 vast majority of scientific sources were 5 provided by counsel for the plaintiff, or 6 were referenced or described in material 7 that was made available, such as Johnson 8 & Johnson's Health Canada submission. 9 It is possible I surfaced one 10 or two things on my own as I looked 11 around. 12 BY MR. HEGARTY: 13 Q. Did you do any type of PubMed or 14 other search vehicle that doctors use to -- to 15 search across the medical and scientific 16 literature as part of your work on this case? 17 A. I did not do a PubMed search. 18 Q. You said the materials that 19 plaintiffs' counsel provided to you were all sent 20 via Dropbox? 21 A. They were all made available in 22 Dropbox and some of them were probably sent as 23 e-mail attachments, but those would duplicate what 24 was in the Dropbox.</p> |

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| <p>1 Q. On page 2 of your report. 2 A. Report or the references? 3 Q. The report. Now we're back to the 4 report, which is Exhibit No. 4. 5 In the Methodology section, page or 6 paragraph 9, you say that you were asked to answer 7 the following questions, and you list two 8 questions there in that paragraph, right? 9 A. Yes. 10 Q. Who asked you to answer those 11 questions? 12 A. The -- I worked with the plaintiffs' 13 counsel to formulate the questions that I would 14 answer in my opinion. 15 Q. You state as well in that paragraph 16 that you were not asked to provide an opinion on 17 whether talc causes -- talcum powder products 18 cause cancer, correct? 19 A. Correct. 20 Q. In this case, you are not offering 21 opinions on causation, correct? 22 A. I am not offering my independent 23 professional assessment of causation. I am making 24 supportable inferences about causation and risk</p> | <p>Page 118</p> <p>1 something that was referenced in -- in some, 2 though not all, of the reports. It is the -- it 3 is the type of, you know, causation algorithm that 4 would be familiar in a lot of settings. 5 In my work, I tend not to be. My 6 expertise is, again, an expertise that involves a 7 lot of connections and a lot of considerations and 8 a lot of history. Nothing I do requires following 9 an algorithm. 10 Q. You did not do a Bradford Hill 11 analysis with regard to talcum powder use and 12 ovarian cancer, right? 13 A. I did not. I did read references in 14 some of the material to Bradford Hill criteria 15 and -- and ovarian cancer and talc. 16 Q. You did not do a formal risk 17 assessment with regard to talcum powder use and 18 ovarian cancer, correct? 19 A. I certainly didn't do a formal risk 20 assessment. I read a lot of risk assessment 21 material here. 22 Q. You did not do any type of Bradford 23 Hill analysis or formal risk assessment with 24 regard to asbestos and ovarian cancer, correct?</p> |
| <p>Page 119</p> <p>1 and uncertainty based on other expertise from 2 other individuals. 3 Q. And you have not done your own 4 assessment of the medical and scientific 5 literature as to whether talcum powder products 6 can cause ovarian cancer, correct? 7 DR. THOMPSON: Object to form. 8 THE WITNESS: I have. I have 9 done what I would consider to be a first 10 pass review of the scientific literature 11 that would be appropriate for, say, 12 writing a solid article in the peer 13 literature -- peer-reviewed literature 14 about the regulatory requirements at 15 issue here. 16 I would be perfectly 17 comfortable taking, you know, salient 18 points from my report and basing a 19 peer-reviewed article on that. 20 BY MR. HEGARTY: 21 Q. Do you know what a Bradford Hill 22 analysis is? 23 A. I do know. It wasn't something -- I 24 can't recite each of the criteria. It was</p> | <p>Page 121</p> <p>1 DR. THOMPSON: Object to form. 2 THE WITNESS: With respect to 3 asbestos and cancer, the -- the causation 4 analysis is from a policy perspective 5 already definitive. There's no reason to 6 do that. 7 BY MR. HEGARTY: 8 Q. You did not do it? 9 A. Did not. No need. 10 Q. You also did not do a Bradford Hill 11 or risk assessment analysis with regard to heavy 12 metals and ovarian cancer, correct? 13 A. That's correct. 14 Q. You didn't do a Bradford Hill or 15 risk assessment analysis with regard to fragrances 16 and cancer risk, correct? 17 A. I don't believe there's actually 18 enough information in existence regarding the 19 fragrances in these particular products for anyone 20 to do that analysis. 21 Q. You did not do any type of Bradford 22 Hill or risk assessment analysis with regard to 23 fibrous talc and ovarian cancer, correct? 24 A. Again, fibrous talc is treated on a</p> |

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| <p>1 par with asbestos in enough of the material that I 2 read that I would give the same answer as for 3 asbestos.</p> <p>4 Q. Okay. Did you assume for purposes 5 of your report that talcum powder use causes 6 ovarian cancer?</p> <p>7 DR. THOMPSON: Object to form.</p> <p>8 THE WITNESS: Did I assume 9 that talcum powder use causes ovarian 10 cancer? Certainly not. It's talcum 11 powder use, you know, that's a very 12 general phrase. I could use talcum 13 powder, you know, in many ways. Women 14 could use talcum powder in many ways and, 15 you know, I would have no basis for that 16 assumption.</p> <p>17 That's different from talking 18 about what's at issue in this case, which 19 are specific applications and specific 20 ways over specific periods of time with 21 specific products whose contents are not 22 well-established.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. Well, did you assume for purposes of</p> | <p>1 The information that I take 2 out of all of this material, you know, 3 actually involves context that may not be 4 similar to the context in, say, a 5 particular causation report.</p> <p>6 BY MR. HEGARTY:</p> <p>7 Q. You agree that you have not reviewed 8 all of the defense expert reports as it relates to 9 talcum powder use and ovarian cancer?</p> <p>10 A. Correct.</p> <p>11 Q. You agree that before someone 12 testifies in court that talcum powder causes 13 ovarian cancer, they should have done a 14 comprehensive analysis of all the medical and 15 scientific literature on the issue, correct?</p> <p>16 DR. THOMPSON: Object to form.</p> <p>17 THE WITNESS: I don't know 18 the answer to that because I have not 19 been asked to testify in court as to 20 whether talcum powder causes ovarian 21 cancer.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. You certainly didn't do a 24 comprehensive analysis of all the medical and</p> |
| <p>1 your report that any manner of talcum powder use 2 can cause ovarian cancer?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: I did not make 5 the assumption. I relied on the 6 scientific conclusions of scientific 7 experts' published literature. I 8 evaluated the confidence intervals, the 9 risks associated, the scientific design 10 for the science, but also the assessments 11 of other umbrella bodies that have done 12 some type of systematic review for 13 whatever their own purposes are.</p> <p>14 Understand that my expertise 15 fundamentally situates each one of these 16 documents in a context, and it's the 17 context that collectively forms the basis 18 for my opinion.</p> <p>19 You know, what year, for what 20 purpose, by what organization, subject to 21 what types of business constraints, what 22 types of political considerations, what 23 types of resource constraints, that's 24 what I do.</p> | <p>1 Page 123 2 scientific literature on talcum powder use and 3 ovarian cancer, correct?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: I feel that I 5 did a sufficient review of the scientific 6 literature on which to base my opinions, 7 and I actually -- actually feel quite 8 strongly about this. Because it's one of 9 the things that, given the preparation of 10 this report, I made sure I could do, and 11 I feel I have the scientific and medical 12 background to understand that.</p> <p>13 So I actually made a very 14 specific effort to consider the 15 underlying science here.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. You agree you have not analyzed all 18 the animal studies on talcum powder use and 19 ovarian cancer, correct?</p> <p>20 DR. THOMPSON: Object to form.</p> <p>21 THE WITNESS: I agree.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. You have not looked at all the cell 24 studies on talcum powder use and ovarian cancer,</p> |

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| <p>1 correct?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: Again, if</p> <p>4 you're building the number of things I</p> <p>5 haven't looked at, I don't really know</p> <p>6 what the denominator is here.</p> <p>7 If, for example, there were</p> <p>8 two animal studies that were major animal</p> <p>9 studies and that's all the animal studies</p> <p>10 there were, chances are I asked for them,</p> <p>11 I received them, and I looked at them.</p> <p>12 So if you're giving me</p> <p>13 denominators, you know, where that's</p> <p>14 greater than 10 such studies, I will be</p> <p>15 happy to agree that I didn't review all</p> <p>16 of them; but if the denominator on some</p> <p>17 of this is there were three studies,</p> <p>18 possibly I did.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. Let me ask it a different way.</p> <p>21 If you reviewed the submission that</p> <p>22 Johnson & Johnson made to Health Canada that we</p> <p>23 talked about earlier that are in your notebook,</p> <p>24 you know that there are hundreds of animal cell</p> | <p>1 ovarian cancer, correct?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: That I read all</p> <p>4 the cell studies. Again, I really find</p> <p>5 it's hard to answer questions where I</p> <p>6 don't know the denominator, but I'm happy</p> <p>7 to agree with you that there are many</p> <p>8 things that have been studied that might</p> <p>9 be plausibly related to these questions</p> <p>10 that have been published in scientific</p> <p>11 literature that I have not. But that</p> <p>12 would be true of literally any question</p> <p>13 you could ask me on any topic.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. Well, let me ask it a different way.</p> <p>16 You didn't go out and try to find</p> <p>17 all the cell studies on talcum powder use and</p> <p>18 ovarian study, correct?</p> <p>19 A. Correct. I do have to reinforce</p> <p>20 that I understand the difference between the</p> <p>21 questions you're asking and the information I'm</p> <p>22 trying to provide.</p> <p>23 I made a very serious effort to</p> <p>24 consider the best available science on both sides</p> |
| <p>1 and epidemiologic studies cited in that document,</p> <p>2 correct?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: I would want</p> <p>5 to -- as I would for anything, I would</p> <p>6 want to review the document. There were</p> <p>7 many studies cited. How relevant they</p> <p>8 are to the questions Health Canada was</p> <p>9 considering is a matter of debate.</p> <p>10 BY MR. HEGARTY:</p> <p>11 Q. Did you read the entirety of that</p> <p>12 document?</p> <p>13 A. I read everything in that -- in the</p> <p>14 pages that, you know, I have here. I read</p> <p>15 everything that was text that I could decipher.</p> <p>16 There's a lot of things that are in tabular or</p> <p>17 supplemental fashion; and, no, I did not read</p> <p>18 those things.</p> <p>19 Q. You agree, though, that you did not</p> <p>20 read all of the studies that are cited in that</p> <p>21 document?</p> <p>22 A. I'm sure that's the case.</p> <p>23 Q. And you can't say sitting here today</p> <p>24 that you read all the cell studies on talc and</p> | <p>1 and to consider it over time.</p> <p>2 Q. You didn't try to go out and make</p> <p>3 sure you had found and read all the epidemiologic</p> <p>4 studies on talcum powder use and ovarian cancer,</p> <p>5 correct?</p> <p>6 A. The epidemiological studies, we --</p> <p>7 we can certainly go into particular studies; but,</p> <p>8 again, I find it very hard to answer these --</p> <p>9 these denominator questions. There tend to be a</p> <p>10 small number of case-controlled studies, a small</p> <p>11 number of cohort studies.</p> <p>12 There's a whole bunch of</p> <p>13 differences, as you well know, between studies</p> <p>14 that are looking at sort of pathways to ovarian</p> <p>15 cancer development. Each of the things in terms</p> <p>16 of inflammation, in terms of migration, in terms</p> <p>17 of deep embeddedness of talc in ovaries.</p> <p>18 There's all sorts of things that</p> <p>19 anyone with, you know, a basic expertise in</p> <p>20 medicine or science will be able to step you</p> <p>21 through; and each one of these is going to be</p> <p>22 established scientifically over time, often for</p> <p>23 reasons that are not reasons that are about</p> <p>24 Johnson & Johnson baby powder and ovarian cancer,</p> |

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| <p>1 and all of these, you know, collectively inform 2 scientific judgments. 3 So I'm happy to make any study you 4 want to offer me. Please show me a study that you 5 think would be relevant to my conclusions; but at 6 the end of the day, remember I'm not offering a 7 scientific opinion on causation of ovarian cancer 8 from your product. 9 Q. My question was different and listen 10 to my question. 11 You did not, as part of your 12 methodology in this case, go out and search across 13 all the medical and scientific literature to make 14 sure you had found all of the epidemiologic 15 studies looking at talcum powder use and ovarian 16 cancer? 17 A. As I said before, I did not do a 18 PubMed search. 19 Q. Cite for me any instances where you 20 have analyzed before this -- getting involved in 21 this case a cosmetic product, its manufacturer, 22 and the applicable regulations like you've done in 23 your report? 24 DR. THOMPSON: Object to form.</p> | <p>Page 130</p> <p>1 an article where you've cited to internal company 2 documents? 3 A. I don't. I would have to go back 4 and review articles, but there wouldn't have been 5 internal company documents that were made directly 6 available to me on a confidential basis. They 7 would have been internal company documents 8 involving, say, tobacco or -- you know, there's a 9 lot of areas. Silicon breast implants. 10 There are various things I've 11 written about over the years that involve 12 hazardous products that involve liability where 13 internal corporate documents may well be part of 14 the analysis, but I would have to go back and 15 look. 16 Q. Besides sitting here today, can you 17 cite for me any published articles of yours where 18 you cited in that article internal company 19 documents? 20 A. Not that I -- 21 DR. THOMPSON: Object to form. 22 THE WITNESS: Not that I can 23 recall right now, but I've written a lot 24 of articles.</p> |
| <p>Page 131</p> <p>1 THE WITNESS: I have not had 2 cause to analyze a cosmetic manufacturer. 3 I would emphasize that I, as a good 4 litigator mind in a litigation context, I 5 analyze regulatory problems across 6 industries all the time. 7 BY MR. HEGARTY: 8 Q. Have you ever published an analysis, 9 like you've done here, looking at the manufacturer 10 of a cosmetic product and the product itself? 11 DR. THOMPSON: Object to form. 12 THE WITNESS: No. 13 BY MR. HEGARTY: 14 Q. Have you ever published an article 15 where you've given opinions based on internal 16 company documents? 17 DR. THOMPSON: Object to form. 18 THE WITNESS: I'm sorry. If 19 by "opinion" do you mean an expert 20 witness opinion in litigation? We've 21 established that I don't do that very 22 much. 23 BY MR. HEGARTY: 24 Q. Well, when have you ever published</p> | <p>Page 133</p> <p>1 BY MR. HEGARTY: 2 Q. Have you ever written an article 3 where you've cited to an expert report in 4 litigation? 5 DR. THOMPSON: Object to form. 6 THE WITNESS: I also don't 7 know that for a fact, but I can't recall 8 any. 9 BY MR. HEGARTY: 10 Q. In paragraph 10 of your report, you 11 discuss the literature that you reviewed. 12 Did anyone help you in reviewing the 13 literature or searching for literature, someone at 14 your office or otherwise? 15 A. No, I didn't -- didn't use any 16 research assistants or any -- any other 17 individuals for assistance here. 18 Q. Other than doing you mentioned a 19 Google search before, did you do -- use any other 20 formal methods of searching for materials in 21 preparing your report? 22 DR. THOMPSON: Object to form. 23 THE WITNESS: So I reviewed 24 sort of the leading casebook on food,</p> |

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| <p>1 drug, and cosmetic regulation that had a 2 chapter on -- on cosmetic regulation that 3 gave rise to a whole bunch of sources 4 that I may have, you know, Googled to 5 look at a Federal Register something 6 or -- or some particular reference, some 7 other -- some earlier cosmetic-related 8 controversy.</p> <p>9 You know, this is -- this is a 10 casebook, you know, including among its 11 authors Peter Hutt, who, you know, is a 12 long-time expert I have great respect for 13 who tends to represent the cosmetics 14 industry in a lot -- in a lot of 15 policy-related proceedings.</p> <p>16 So yes, I did a lot of 17 additional research based on things that 18 I -- I discovered reviewing that 19 material, reviewing other material. 20 It's, again, standard practice with me to 21 follow what you think are important 22 leads.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. With regard to the materials that</p> | <p>1 considered for purposes of preparing your report? 2 DR. THOMPSON: Object to form. 3 THE WITNESS: My description 4 of the methodology at a relatively high 5 level is contained in paragraphs 9 and 10 6 and reflects exactly how I would go about 7 a regulatory analysis in any 8 health-related area, in the safety 9 risk-related area and, frankly, a whole 10 lot of regulatory areas that are -- that 11 are not about human health and safety 12 where there are governing statutes. 13 There are regulatory systems. There are 14 self-regulatory systems. There are 15 balances of federal and state authority.</p> <p>16 There is a historical context, 17 a political context, an industrial, and 18 organizational context. Sometimes a 19 professional context, which is, of 20 course, very important to distinguishing 21 drug regulation from cosmetic regulation.</p> <p>22 This is all routine for me. 23 It's exactly what I do if I'm writing an 24 article to teach a class or even just,</p> |
| <p>1 you did review, did you assign any weight -- 2 formally assign any weight to the materials for 3 purposes of writing your report?</p> <p>4 DR. THOMPSON: Object to form. 5 THE WITNESS: I mean, there 6 are basic hierarchies, you know, in terms 7 of legal authority. There are, you know, 8 but other than that, there are no 9 specific criteria for assigning weight. 10 I mean, one's regulatory expertise is not 11 the same as doing a quantitative risk 12 analysis or a meta-analysis.</p> <p>13 BY MR. HEGARTY:</p> <p>14 Q. Well, in preparing your report, did 15 you assign a numerical value to the weight of the 16 materials that you reviewed?</p> <p>17 A. No.</p> <p>18 DR. THOMPSON: Object to form. 19 THE WITNESS: Except perhaps 20 how heavy they were. (Laugh).</p> <p>21 BY MR. HEGARTY:</p> <p>22 Q. Do you explain anywhere in your 23 report the methodology that you went about that 24 you used in identifying the materials that you</p> | <p>1 you know, at home thinking about a 2 current event.</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. Did plaintiffs' counsel give you 5 access to a database of all the documents that 6 Johnson & Johnson had produced in this case?</p> <p>7 A. They didn't give me direct access to 8 a very large universe of documents. Presumably, 9 they gave me access to the documents they thought 10 were relevant, but I actually don't know how they 11 assembled their documents and do their management.</p> <p>12 Q. You did not yourself do any type of 13 search over a database of documents produced using 14 search terms to look for company -- internal 15 company documents --</p> <p>16 A. I did not.</p> <p>17 Q. -- that Johnson & Johnson produced?</p> <p>18 A. I did not.</p> <p>19 Q. But plaintiffs' counsel did provide 20 you with some internal company documents that have 21 been produced in this case, correct?</p> <p>22 A. Correct.</p> <p>23 Q. These were not documents you 24 selected from a larger set, correct?</p> |

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| <p>1 A. Except --</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: Except insofar</p> <p>4 as I asked for the things that I thought</p> <p>5 were not evident from what I had already</p> <p>6 reviewed. For example, asking for</p> <p>7 material that would bear on marketing</p> <p>8 decisions, marketing languages,</p> <p>9 strategies over time for Johnson &</p> <p>10 Johnson consumer products and</p> <p>11 specifically for Johnson's Baby Powder.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. Did you ever ask for specific</p> <p>14 document by Bates number or title of that</p> <p>15 document?</p> <p>16 A. Not to my recollection. It would</p> <p>17 never have been by Bates number. It's possible</p> <p>18 that there was in a deposition transcript some</p> <p>19 reference to a document that I then requested. I</p> <p>20 don't recall.</p> <p>21 Q. Are you aware that Johnson & Johnson</p> <p>22 has produced thousands of documents regarding</p> <p>23 communications with FDA, thousands of documents,</p> <p>24 if not hundreds of thousands of documents,</p> | <p>Page 138</p> <p>1 some of these documents that the P numbers are</p> <p>2 plaintiffs' exhibits from trial? Did you</p> <p>3 understand that?</p> <p>4 A. I do understand that.</p> <p>5 Q. Did you ask plaintiffs' counsel to</p> <p>6 give you all the defense exhibits that had been</p> <p>7 introduced at trials?</p> <p>8 A. I asked. I did not ask for all the</p> <p>9 defense exhibits. I did not ask for all the</p> <p>10 plaintiffs' exhibits. I did ask for the defense</p> <p>11 perspective on the issues that were relevant to my</p> <p>12 opinions.</p> <p>13 Q. Did you --</p> <p>14 A. I asked --</p> <p>15 Q. I'm sorry.</p> <p>16 A. I'm sorry. I asked repeatedly for</p> <p>17 that.</p> <p>18 Q. Well, did you ask specifically for</p> <p>19 defense exhibits that had been introduced at</p> <p>20 trial?</p> <p>21 A. No.</p> <p>22 Q. And what did you do to confirm that</p> <p>23 the plaintiffs' counsel gave you a fair</p> <p>24 representation of the documents on the issues you</p> |
| <p>Page 139</p> <p>1 regarding testing of talc for asbestos.</p> <p>2 Are you aware of that?</p> <p>3 A. I am aware of a number of FDA</p> <p>4 contacts and a number of testing-related materials</p> <p>5 that Johnson & Johnson has introduced into this</p> <p>6 litigation. I have no idea what number they are,</p> <p>7 and, again, I have no idea of how relevant they</p> <p>8 are.</p> <p>9 Q. In the document we're looking at</p> <p>10 before, Exhibit No. 5, there are a number of</p> <p>11 plaintiff exhibits that are identified by P</p> <p>12 numbers beginning on page 16 and carrying over to</p> <p>13 page 17.</p> <p>14 Do you see those pages?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall looking at any of the</p> <p>17 documents that have a P number on them, an exhibit</p> <p>18 sticker?</p> <p>19 A. I certainly have looked at documents</p> <p>20 with P numbers, such as Johnson & Johnson response</p> <p>21 to Health Canada, which we just discussed, which</p> <p>22 had a P number on it. I noticed there were P</p> <p>23 numbers on some documents.</p> <p>24 Q. Did you understand in looking at</p> | <p>Page 141</p> <p>1 talk about in your report?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: I -- my</p> <p>4 confirmation was looking at the internal</p> <p>5 consistency of what I was reviewing and</p> <p>6 the opinions I was formulating based on</p> <p>7 it. I think I would have noticed</p> <p>8 significant biases. I think I would have</p> <p>9 noticed significant gaps.</p> <p>10 But, no, I didn't do any</p> <p>11 structured confirmation and I certainly</p> <p>12 didn't -- I mean, other than an informal</p> <p>13 request, I'm not sure what I could have</p> <p>14 done. So I didn't.</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. Have you ever outside of any</p> <p>17 litigation work in your professional career ever</p> <p>18 relied on documents that were selected for you to</p> <p>19 review by a plaintiff's lawyer?</p> <p>20 DR. THOMPSON: Object to form.</p> <p>21 THE WITNESS: Again, yes, in</p> <p>22 the sense that I was the principal</p> <p>23 investigator of a very large</p> <p>24 investigation on medical malpractice</p> |

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| <p>1 policy that was funded by the Pugh Trust, 2 which involved outreach to a whole lot of 3 people and, you know, that included 4 plaintiff's lawyers, defense lawyers, 5 insurance companies, you know, physician, 6 and hospital organizations and others. 7 And, you know, when I asked for materials 8 from each of them, I got the materials 9 that they gave me.</p> <p>10 BY MR. HEGARTY:</p> <p>11 Q. My question was as to any 12 non-litigation work you've ever done, not regular 13 litigation.</p> <p>14 A. This is non-litigation.</p> <p>15 Q. Which part?</p> <p>16 A. Everything I just said was 17 non-litigation.</p> <p>18 Q. And what was the situation?</p> <p>19 A. A large grant program that I led on 20 medical liability.</p> <p>21 Q. Let me ask it a different way.</p> <p>22 In any publication of yours, have 23 you ever relied in the materials that you reviewed 24 on a plaintiff's lawyer to provide you the</p> | <p>1 In any publication of yours, have 2 you ever reviewed in preparing that publication 3 materials that were provided to you from a 4 plaintiff's lawyer that were produced in a 5 litigation?</p> <p>6 A. That were -- that were -- I'm sorry. 7 That were produced through discovery in the 8 litigation?</p> <p>9 Q. Correct.</p> <p>10 A. I'm sorry. I misunderstood the 11 question.</p> <p>12 Not to my knowledge.</p> <p>13 Q. Are you aware that Johnson & Johnson 14 has put on a website all the facts about talc, 15 thousands of documents that have been introduced 16 in the lawsuits in -- in these cases?</p> <p>17 A. I reviewed -- on my own initiative, 18 I reviewed some of The Facts About Talc web pages 19 that Johnson & Johnson makes available 20 consumer-facing. I didn't -- I didn't think of 21 that as a litigation-related resource, and if 22 there were links to a document trove, I didn't -- 23 I didn't notice that.</p> <p>24 Q. So you did not review the internal</p> |
| <p>1 materials?</p> <p>2 A. To provide me some of the materials?</p> <p>3 I'm sure I have.</p> <p>4 Q. When have you ever written an 5 article that where you relied on materials that 6 came -- that came from a plaintiff's lawyer?</p> <p>7 A. If I were writing on medical 8 liability and making certain points and sometimes 9 the only way you could get information about 10 opinions that were not publicly reported or other 11 insights, I'm relying on the people I'm talking 12 to.</p> <p>13 Again, perhaps I'm misunderstanding 14 your question.</p> <p>15 Q. Yeah.</p> <p>16 Have you ever in any article that 17 you've published ever relied on the materials for 18 that article from a plaintiff's lawyer to produce 19 materials produced in litigation?</p> <p>20 A. I think we're also back to sort of 21 some ambiguity between: Are you drawing a 22 distinction between considered or relied on or can 23 we use relied in a casual sense of --</p> <p>24 Q. Let me ask it a different way.</p> | <p>1 Johnson & Johnson documents that are on that Facts 2 About Talc website?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: Again, it 5 depends. It depends what they were, and 6 if you would like to show me something, 7 perhaps I'll remember that I saw it or 8 not.</p> <p>9 Again, that Facts About Talc 10 website that I saw contained, you know, 11 various statements and various links to 12 other pages. Some of which may have been 13 to documents rather than HTML sites, and 14 so it's possible.</p> <p>15 But, you know, did I look 16 comprehensively through something that 17 was presented as a database of documents? 18 No, I did not.</p> <p>19 MR. HEGARTY: Why don't we go 20 ahead and take a break. It's been 21 another hour and some.</p> <p>22 DR. THOMPSON: Okay.</p> <p>23 MR. HEGARTY: Okay. Go off 24 record.</p> |

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| <p>1 (Recess: 10:40 a.m. - 2 11:02 a.m.) 3 MR. HEGARTY: We are back on 4 the record. 5 BY MR. HEGARTY: 6 Q. Doctor, we were talking about 7 Exhibit No. 5 and in particular some of the 8 literature that's listed on there. 9 Had you read any medical or 10 scientific literature regarding talc and ovarian 11 cancer before being contacted by counsel for 12 plaintiffs in this case? 13 A. I probably had, but I don't recall 14 the specifics. It's been an issue for a long 15 time. 16 Q. When you say you probably had, would 17 that have been, if at all, back when you were in 18 medical school and then doing your internship or 19 residency? 20 A. No. It would more likely have been 21 during my teaching career because health and 22 safety regulation and health law policy are what I 23 do. 24 Q. But sitting here today, can you say</p> | <p>Page 146</p> <p>1 ovarian cancer specific. 2 Q. Had you read any articles prior to 3 being contacted by plaintiffs' counsel looking at 4 heavy metal use and ovarian cancer -- heavy metal 5 exposure and ovarian cancer? 6 A. No. 7 Q. All of the opinions that are set out 8 in your report that we marked previously as 9 Exhibit No. 4 were formed after you were contacted 10 by plaintiffs' counsel about testifying as an 11 expert in this case, correct? 12 DR. THOMPSON: Object to form. 13 THE WITNESS: Yes. After I 14 was contacted to consider whether I would 15 be an expert in this case, yes. 16 BY MR. HEGARTY: 17 Q. You mentioned that prior to being 18 contacted by counsel for plaintiffs in this case 19 that you had been aware of an alleged link between 20 talcum powder use and ovarian cancer, correct? 21 A. Correct. 22 Q. And you talked generally about news 23 sources and other general perhaps sources that you 24 would see in your work that refer to -- referred</p> |
| <p>Page 147</p> <p>1 definitively that you had read any medical 2 literature, whether it's an epidemiologic article 3 or cell study or animal study, on talcum powder 4 use and ovarian cancer before being contacted by 5 counsel for the plaintiffs in this case? 6 A. I believe that it's extremely likely 7 that I did because it's a big issue. 8 Q. Can you identify for me any article 9 you had read or the time period in which you had 10 read such an article? 11 A. Not specifically. 12 Q. So are you able to identify for me 13 any article that you had read -- medical or 14 scientific article about talcum powder use and 15 ovarian cancer before being contacted by 16 plaintiffs' counsel? 17 A. Can I identify it now? No. 18 Q. Had you read any article looking at 19 asbestos and ovarian cancer prior to being 20 contacted by plaintiffs' counsel in this case? 21 A. I have read a lot of 22 asbestos-related documents over the years in dribs 23 and drabs as things came up. Most of them were 24 mesothelioma related. I don't recall any being on</p> | <p>Page 149</p> <p>1 to talcum powder use and ovarian cancer. 2 Are you able to cite any specific 3 things you had read prior to being contacted by 4 Dr. Thompson as it relates to talcum powder use 5 and ovarian cancer? 6 A. I can't cite them specifically. 7 Most of the things I would see in the ordinary 8 course would be things that had either a 9 law-related or a health policy-related connection. 10 Most of my, you know, daily news feed type sources 11 are not, you know, the clinical literature as 12 much. 13 Now if something had shown up that 14 was, you know, JAMA New England Journal style 15 publication or, you know, abstracted in some 16 compendium, you know, major clinical News of the 17 Week, the old AMA news sites, then I would have 18 seen it in that connection. 19 But, you know, this is a major 20 concern and a major source of -- of potential 21 liability and litigation. So, of course, as a law 22 and medical school professor, I've seen 23 references. 24 Q. As a medical student and then when</p> |

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| <p>1 you finished law and medical school and did some 2 clinical practice in medicine, did you ever read 3 anything or were you ever taught anything as it 4 relates to talcum powder use and ovarian cancer?</p> <p>5 A. Not that I recall.</p> <p>6 Q. You -- first back up.</p> <p>7 Have you ever taught in any course 8 of yours -- let me ask it a different way.</p> <p>9 Have you ever referenced in any 10 course you have taught anything about talcum 11 powder use and ovarian cancer or litigation 12 involving talcum powder use and ovarian cancer?</p> <p>13 A. Not that I recall.</p> <p>14 Q. You cite in your report to such 15 organizations as IARC, Health Canada, and the FDA.</p> <p>16 Do you recall that?</p> <p>17 A. Yes.</p> <p>18 Q. So do you agree that it was 19 important for your methodology in this case to 20 consider what these health authorities have to say 21 about talc use and ovarian cancer, correct?</p> <p>22 DR. THOMPSON: Object to form.</p> <p>23 THE WITNESS: Correct, with 24 the addition that my opinion is</p> | <p>Page 150</p> <p>1 A. Yes.</p> <p>2 Q. As this letter shows, and as you 3 know from your own analysis, FDA did receive two 4 Citizen Petitions asking that a warning be placed 5 on talc products, and they give a couple examples 6 of those types of warnings on the first page of 7 this exhibit, right?</p> <p>8 A. They don't give examples. They give 9 the specific warnings that were requested in the 10 Citizen's Petitions.</p> <p>11 Q. Fair enough.</p> <p>12 And in 2014, FDA determined that the 13 data did not demonstrate a causal association 14 between talcum powder use in the perineal area and 15 ovarian cancer, correct?</p> <p>16 A. To quote from that letter, as I 17 described in paragraph 150 of my opinion, the 18 letter says:</p> <p>19 "While the growing body of evidence 20 to support a possible association ... is difficult 21 to dismiss, the evidence is insufficient for FDA 22 to require as definitive a warning as you are 23 seeking."</p> <p>24 It's not exactly what you had quoted</p> |
| <p>Page 151</p> <p>1 fundamentally about regulatory compliance 2 and self-regulatory conduct and not about 3 causation.</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. On page 11 -- let me not -- I don't 6 need to reference your report. Let me just back 7 up.</p> <p>8 You mentioned earlier when you went 9 through the materials that you had in front of you 10 that you -- the April 2014 FDA letter denying two 11 Citizen's Petitions seeking warnings about the 12 risk of ovarian cancer with talcum powder use, 13 correct?</p> <p>14 A. Correct.</p> <p>15 MR. HEGARTY: I'm going to 16 mark as Exhibit No. 7 a copy of that 17 April 1, 2014 letter.</p> <p>18 (Document marked for 19 identification as Sage Exhibit 7.)</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. So you've seen this before, correct?</p> <p>22 A. I have.</p> <p>23 Q. You comment about it in your report, 24 right?</p> | <p>Page 153</p> <p>1 there.</p> <p>2 Q. Well, on the first page of the -- of 3 Exhibit No. 7, second last paragraph, last line, 4 it says:</p> <p>5 "FDA did not find that the data 6 submitted presented conclusive evidence of a 7 causal association between talc use and the 8 perineal area and ovarian cancer."</p> <p>9 Correct?</p> <p>10 A. Certainly with the emphasis on 11 "conclusive" which is the only word that makes 12 that consistent with the language that I quoted to 13 you.</p> <p>14 Q. And FDA did a comprehensive review 15 of the science in rejecting these opinions, 16 correct? I'm sorry. These petitions, correct?</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: I don't know 19 exactly what the FDA did. There are 20 extraordinary gaps in time and 21 extraordinary issues of resources between 22 1994 petition and the 2014 response.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. Are you an expert in the process by</p> |

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| <p>1 which FDA reviews and responds to Citizen 2 Petitions?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: My expertise in 5 how agencies communicate with public and 6 industry is sufficient to make me an 7 expert in evaluating this letter.</p> <p>8 BY MR. HEGARTY:</p> <p>9 Q. Have you ever been involved in an 10 FDA review of a Citizen Petition?</p> <p>11 A. No.</p> <p>12 Q. How many Citizen Petitions and FDA 13 responses have you ever read?</p> <p>14 A. Probably -- well, I certainly have 15 read the response from the 1990s on urocanic acid 16 because that one is highly relevant to this case.</p> <p>17 Q. On what? I'm sorry.</p> <p>18 A. Urocanic acid.</p> <p>19 Q. Okay.</p> <p>20 A. U-r-o-c-a-n-i-c.</p> <p>21 Because that's rather relevant here 22 because it includes the "safety not determined" 23 language.</p> <p>24 I have looked at the extent to which</p> | <p>1 that's many years -- many years ago.</p> <p>2 Q. Have you ever submitted materials in 3 connection with FDA considering a Citizen 4 Petition?</p> <p>5 A. No.</p> <p>6 Q. Have you ever drafted or been 7 involved in the drafting of FDA's responding to a 8 Citizen Petitions?</p> <p>9 A. No.</p> <p>10 Q. Do you know who Steve Musser is at 11 FDA?</p> <p>12 A. No.</p> <p>13 Q. Do you know where he went to school?</p> <p>14 A. No.</p> <p>15 Q. Do you know his educational 16 background?</p> <p>17 A. Well, he's got a PhD. So I can tell 18 you he didn't go to medical school; but, no, I 19 don't know where he went to school. I did not -- 20 I did not look him up.</p> <p>21 Q. Did you try to talk to him about the 22 2014 letter?</p> <p>23 A. No.</p> <p>24 Q. Why not?</p> |
| <p>1 Citizen's Petitions are publicly available on a 2 database. The ones relating to cosmetics do not 3 appear to be. So I've become very interested in 4 the Citizen Petition process.</p> <p>5 But prior to considering these -- 6 these issues, no, I had not looked at Citizen 7 Petitions except in passing. You do see Citizen's 8 Petitions when you teach regulatory topics.</p> <p>9 Q. And the urocanic acid Citizen 10 Petition was something you reviewed after being 11 hired as an expert in this case, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Have you ever discussed with anyone 14 at FDA about FDA's handling of Citizen Petitions?</p> <p>15 A. No. It's very high on my list for 16 when I am in contact again with FDA officials, and 17 I am friends with a couple of former 18 commissioners, and should I run into them, it will 19 be one of the things I will be interested in 20 discussing.</p> <p>21 Q. Who are you friends with?</p> <p>22 A. I'm friends with Mark McClellan and 23 I'm acquaintances with Scott Gottlieb. And in the 24 old days, I was friends with Don Kennedy, but</p> | <p>1 A. I don't know him and I would have no 2 reason to contact him. I also, from perhaps lack 3 of experience with serving as an expert witness, 4 decided that my reviews and research should be 5 documentary and not involve individuals.</p> <p>6 Q. Did anybody instruct you as part of 7 your work as an expert witness that you couldn't 8 reach out to others and talk to them?</p> <p>9 A. No one instructed me. It was my -- 10 it was my working assumption. Seemed a prudent 11 way to do a report.</p> <p>12 Q. Do you contend that the doctors and 13 scientists at the FDA involved in responding to 14 the two Citizen Petitions were not qualified to 15 assess the safety of talc?</p> <p>16 A. I --</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: I express no 19 opinions on their qualifications.</p> <p>20 Again, I would point out that 21 responses to Citizen's Petitions are not 22 definitive responses on the underlying 23 scientific questions. They are responses 24 to a specific request for a specific</p> |

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| <p>1 action, in this case, for a specific 2 warning statement.</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. Well, is it your contention that if 5 FDA believed a warning was needed beyond just what 6 was proposed that they would have taken -- they 7 would not have taken this action?</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 BY MR. HEGARTY:</p> <p>10 Q. Let me ask it in a different way. 11 Is it your contention that FDA 12 believed a warning was needed, just not the ones 13 that were requested in the Citizen Petitions?</p> <p>14 DR. THOMPSON: Object to form.</p> <p>15 THE WITNESS: I have no basis 16 to know what FDA in some organizational 17 sense believes on that topic. What I 18 have is the regulatory provisions under 19 which a Citizen's Petition is submitted, 20 and I have this particular response.</p> <p>21 BY MR. HEGARTY:</p> <p>22 Q. Is it your contention that FDA 23 believed that there is a risk of ovarian cancer 24 with talc use and chose to do nothing about it?</p> | <p>Page 158</p> <p>1 one thing I will opine is that there's 2 nothing in this letter that should 3 suggest to anyone that FDA thinks that 4 talcum powder products do not cause 5 ovarian cancer.</p> <p>6 BY MR. HEGARTY:</p> <p>7 Q. I'm sorry. What did you just say in 8 this last sentence? I didn't...</p> <p>9 A. Would you rather it read back?</p> <p>10 MR. HEGARTY: Yeah. Would you 11 read it back, the last part of that 12 response, please?</p> <p>13 (The reporter read the record 14 on page 159 line 23 to page 160 line 5.)</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. So is it your testimony in this case 17 that FDA believes that talcum powder use causes 18 ovarian cancer?</p> <p>19 A. I don't know what they believe, but 20 this letter doesn't say that they believe that 21 there is no causal association. It is simply a 22 response, and a rather sloppily drafted response, 23 to two Citizen's Petitions issued 20 years after 24 the first one. It says what it says, and I can't</p> |
| <p>Page 159</p> <p>1 A. Again --</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: -- I do not know 4 anything about FDA's belief.</p> <p>5 I would repeat. What we see 6 in this letter, which if I were 7 supervising does not meet my standards 8 for clarity, is the sentence you cited, 9 quoted, which was:</p> <p>10 "FDA did not find that the 11 data submitted" -- notice submitted, not 12 all the data that might be available -- 13 "presented conclusive evidence."</p> <p>14 And then the language that I 15 quoted back, which says:</p> <p>16 "Growing body of evidence to 17 support a possible association ... is 18 difficult to dismiss. Evidence is 19 sufficient -- insufficient for FDA to 20 require as definitive a warning as you 21 are seeking."</p> <p>22 I think this is a badly 23 drafted letter. I think it is hard to 24 interpret and sounds rather evasive, but</p> | <p>Page 161</p> <p>1 give you anymore insight into the dynamics of the 2 final text and what we have in front of us.</p> <p>3 Q. Is it your opinion in this case that 4 FDA failed to do its job with regard to responding 5 to the two Citizen Petitions?</p> <p>6 DR. THOMPSON: Object to form.</p> <p>7 THE WITNESS: It's my opinion 8 that FDA is grossly underresourced with 9 respect to cosmetics.</p> <p>10 It's my opinion the Citizen's 11 Petition process needs a significant 12 revision, and I think this -- these two 13 petitions and this particular response as 14 issued at this time, you know, supports 15 my belief that -- that the Citizen's 16 Petition process is in need of 17 improvement.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. Well, my question wasn't very 20 specific.</p> <p>21 Is it your opinion in this case that 22 FDA failed to do its job that it was tasked to do 23 by Congress with regard to responding to these two 24 Citizen Petitions?</p> |

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| <p>1 MS. PARFITT: Objection. 2 DR. THOMPSON: Object to form. 3 THE WITNESS: See, this will 4 begin to move us into kind of the core of 5 the opinions, which is that FDA has very 6 limited authority over cosmetics. FDA 7 does not supervise the self-regulatory 8 processes that cosmetics manufacturers in 9 the cosmetics industry engage in, and the 10 fundamental obligations remain on the 11 manufacturers. 12 This letter offered an 13 opportunity -- I should say, these two 14 Citizen's Petitions offered an 15 opportunity for the FDA to devote more of 16 its resources to this particular 17 cosmetics-related concern, and FDA 18 declined to take that opportunity. 19 But beyond that, I cannot 20 opine as to their motivation as to the 21 pressures brought to bear on them, as to 22 the competing uses of their resources. 23 All the things that sort of go into why 24 this letter is issued at this time.</p> | <p>1 Johnson regarding the hazards of perineal 2 application of talc. 3 BY MR. HEGARTY: 4 Q. And I'm still not sure you answered 5 my question. 6 Is it, do you have an opinion that 7 FDA failed to do a proper job in responding to 8 these two Citizen Petitions? 9 MS. PARFITT: Objection. 10 DR. THOMPSON: Object to form. 11 Asked and answered. 12 THE WITNESS: All I can do on 13 this one, respectfully, is say, this 14 process is one of the -- and this outcome 15 is one of the reasons that I strongly 16 support Congressional reform of the 17 cosmetics regulatory process. 18 BY MR. HEGARTY: 19 Q. You don't know who at FDA was 20 involved in responding to these Citizen Petitions, 21 correct? 22 A. Correct. 23 Q. You don't know what resources they 24 devoted to respond to these Citizen Petitions,</p> |
| <p>1 BY MR. HEGARTY: 2 Q. My question was very specific and I 3 don't think you answered it. 4 My question was: Is it your opinion 5 that FDA failed to do the job it was assigned to 6 do by Congress in responding to these two Citizen 7 Petitions? 8 MS. PARFITT: Objection. 9 BY MR. HEGARTY: 10 Q. It's whether you have that opinion. 11 MS. PARFITT: Objection. 12 DR. THOMPSON: Object to form. 13 MS. PARFITT: Question was 14 answered. 15 THE WITNESS: Let me -- let 16 me try to convey accurately what my 17 opinion is. 18 My opinion is that this letter 19 is not exculpatory of Johnson & Johnson. 20 FDA issued a response to a Citizen's 21 Petition within its authorities, and its 22 response says what its response says. 23 It does not in any way alter 24 the legal obligations of Johnson &</p> | <p>1 correct? 2 A. I think we have a supportable 3 inference that resource constraints in the 4 cosmetic area make it very difficult for FDA to -- 5 to assess Citizen's Petitions and assess sua 6 sponte actions that might be authorized by 7 Congress but not facilitated. 8 Q. My question, though, is very -- is 9 specific to this Citizen Petition response. 10 Do you know the resources that FDA 11 devoted to respond to these two Citizen Petitions 12 as reflected in Exhibit No. 7? 13 DR. THOMPSON: Object to form. 14 THE WITNESS: I don't know 15 the resources, but I do know, as -- as I 16 imagine you do also, that the history of 17 the Citizen's Petitions, Citizen's 18 Petitions are supposed to generate a 19 response within 180 days. 20 And the, you know, earliest 21 response to the 1994 petition was 22 basically, we're kind of busy, we don't 23 have a lot of resources, and we'll get 24 back to you.</p> |

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| <p>1 And then we have a 2008 2 petition and then we have a 2014 3 response, and I think simply from the 4 time course you can very reasonably infer 5 that resources are insufficient to deal 6 with these as they should be dealt with.</p> <p>7 BY MR. HEGARTY:</p> <p>8 Q. Is it your opinion that FDA believes 9 today that a warning with regard to the risk of 10 ovarian cancer is needed on talcum powder 11 products?</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 THE WITNESS: I think it is 14 clear that the -- that pending changes in 15 leadership or new statements from FDA 16 leadership that FDA believes that 17 cosmetics regulation needs to be 18 improved, and which would support an 19 inference that the things that FDA has 20 been involved in with cosmetics 21 regulation are things that they do not 22 think are adequate to protect the public.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. And my question is specific as it</p> | <p>Page 166</p> <p>1 obtained since the 1994 Workshop further suggests 2 a health hazard and that additional work for 3 possible action is needed."</p> <p>4 So FDA has obviously been concerned 5 about this for a while. In terms of an FDA 6 warning, again, the thing that -- one of the 7 things that distinguishes cosmetic oversight from, 8 say, drug oversight is that FDA's ability to 9 require a warning is far less self-executing.</p> <p>10 FDA does not require -- does not 11 directly regulate the label or labeling of a lot 12 of aspects of cosmetics; and if FDA wishes to 13 require a warning, it has legal authority to do 14 so, but it has to do it through notice and comment 15 rulemaking at significant expense and a 16 significant degree of legal uncertainty.</p> <p>17 So, you know, I am willing to 18 suggest that FDA institutionally sees some 19 significant concerns about causal relationships 20 between perineal talc and ovarian cancer, but the 21 regulatory system is not set up for FDA to 22 vindicate those concerns, which is another reason 23 why your client should have.</p> <p>24 Q. You have not talked to anybody at</p> |
| <p>Page 167</p> <p>1 relates to talcum powder products and ovarian 2 cancer risk.</p> <p>3 Is it your opinion that FDA believes 4 that a warning is needed today on talcum powder 5 products and ovarian cancer risk?</p> <p>6 DR. THOMPSON: Object to form.</p> <p>7 THE WITNESS: So this -- may 8 I refer to a document we've previously 9 discussed?</p> <p>10 BY MR. HEGARTY:</p> <p>11 Q. Does that answer the question?</p> <p>12 A. Yes.</p> <p>13 Q. Sure.</p> <p>14 A. So if we -- if we go back to -- or 15 did you hand it back or do you still have it? The 16 1998 FDA internal review. That document includes 17 -- here it is. This one that we looked at 18 (indicates).</p> <p>19 That document includes a statement 20 upfront. Again, it's not a statement of FDA 21 policy, but it is a statement specifically on talc 22 that pointing out FDA's Workshop says:</p> <p>23 "Perineal talc has been linked to 24 increased risk of ovarian cancer. Additional data</p> | <p>Page 169</p> <p>1 FDA with regard to talcum powder use or talcum 2 powder products and ovarian cancer, correct?</p> <p>3 A. I look forward to doing so.</p> <p>4 Q. Well, have you talked to anybody?</p> <p>5 A. No.</p> <p>6 Q. Paragraph 39 of your report, which 7 is on page 6, the second sentence refers states 8 that:</p> <p>9 "Asbestos when present in talcum 10 powder product is an adulterant because it is 11 hazardous to human health."</p> <p>12 Do you see where I'm reading?</p> <p>13 A. I do.</p> <p>14 Q. One of the materials you cite there 15 is a document, is an NIH document entitled 16 "Asbestos Worker and Employer Guide to Hazards and 17 Recommended Controls."</p> <p>18 Do you see that?</p> <p>19 A. I'm --</p> <p>20 DR. THOMPSON: What page are 21 you on, please?</p> <p>22 MS. PARFITT: Page 6 of the 23 report.</p> <p>24 THE WITNESS: Sorry. I'm not</p> |

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| <p>1 seeing that particular --</p> <p>2 DR. THOMPSON: Okay.</p> <p>3 MS. PARFITT: Paragraph 39.</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. Yeah, if you look at --</p> <p>6 A. I'm not seeing that particular</p> <p>7 paragraph.</p> <p>8 Q. -- 39 at the end, footnote 9 says</p> <p>9 NIOSH.</p> <p>10 A. It's got the NIOSH and OSHA</p> <p>11 material, which is where why the Material Safety</p> <p>12 Data Sheets get revised --</p> <p>13 Q. Right. That document --</p> <p>14 A. -- to give talc exposure.</p> <p>15 Q. I'm sorry.</p> <p>16 That document is "Workplace Exposure</p> <p>17 to Asbestos," correct?</p> <p>18 A. Yes.</p> <p>19 Q. Did you read that document?</p> <p>20 A. No. I read various things that</p> <p>21 referenced that document.</p> <p>22 Q. Do you understand that document is</p> <p>23 about occupational exposure to asbestos?</p> <p>24 A. I understand that document is about</p> | <p>Page 170</p> <p>1 workplace exposure documents, certainly.</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. You're, of course, familiar with</p> <p>4 NIH, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And you're familiar with the NCI,</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. And NCI is the federal government's</p> <p>10 primary health agency on cancer research, correct?</p> <p>11 A. I would have -- that's -- that's a</p> <p>12 strong statement, but for the federal government,</p> <p>13 yes.</p> <p>14 Q. Have you ever had any dealings with</p> <p>15 NCI?</p> <p>16 A. Institutionally, no. Indirectly, I</p> <p>17 have a very wide circle of contacts, and I serve</p> <p>18 on a number of advisory committees, and</p> <p>19 undoubtedly there's been overlap with -- with NCI</p> <p>20 over the years.</p> <p>21 Q. If you go back and look at this</p> <p>22 Exhibit No. 5, the literature materials we've been</p> <p>23 talking -- we were talking about earlier?</p> <p>24 A. Uh-huh.</p> |
| <p>Page 171</p> <p>1 occupational exposure to asbestos. I don't recall</p> <p>2 the details of all these documents, but I have</p> <p>3 noticed that several of the documents that discuss</p> <p>4 occupational exposure also at least have brief</p> <p>5 mention of nonoccupational exposure risks.</p> <p>6 Q. Do you know that that document does</p> <p>7 not discuss talcum powder use?</p> <p>8 A. I would -- I would have to -- I</p> <p>9 would have to review that document to confirm</p> <p>10 that; but, again, remember the assertion is about</p> <p>11 the dangers of asbestos. To the extent that</p> <p>12 asbestos is present in talcum powder, it is by</p> <p>13 FDA's own statement and by other sources</p> <p>14 conclusively an adulterant.</p> <p>15 Q. But you're not -- I'm sorry.</p> <p>16 A. It's not dose-dependent. It's not</p> <p>17 dose-dependent. It's not route-dependent. It is</p> <p>18 simply an adulterant.</p> <p>19 Q. But you understand that the support</p> <p>20 you're citing for that statement is a document</p> <p>21 that refers to "Workplace Exposure to Asbestos,"</p> <p>22 one of the supporting documents?</p> <p>23 DR. THOMPSON: Object to form.</p> <p>24 THE WITNESS: I have seen</p> | <p>Page 173</p> <p>1 Q. You look over at page 6 of that</p> <p>2 document. Tell me when you're at page 6.</p> <p>3 A. I'm at page 6.</p> <p>4 Q. You refer in that document to "NCI</p> <p>5 Snapshot of Ovarian Cancer." It's the very top of</p> <p>6 the page.</p> <p>7 You see that?</p> <p>8 A. Yes, and it doesn't have the</p> <p>9 snapshot exactly. I have -- I have an NCI</p> <p>10 document in front of me that is actually a D</p> <p>11 exhibit. It's a defense exhibit.</p> <p>12 Q. We're going to get to that.</p> <p>13 But in terms of the document you</p> <p>14 reference in your materials, it's this "Snapshot</p> <p>15 of Ovarian Cancer," right?</p> <p>16 A. Yes.</p> <p>17 Q. Did you read that document?</p> <p>18 A. It was made available. I don't</p> <p>19 recall I read your defense exhibit word for word.</p> <p>20 Q. You don't cite that defense exhibit</p> <p>21 in your materials?</p> <p>22 A. You're right.</p> <p>23 Q. Did you look at it in preparing your</p> <p>24 report?</p> |

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| <p>1 A. Did I look at the?</p> <p>2 Q. The document -- well, did you look</p> <p>3 at the NCI PDQ that you reference as a defense</p> <p>4 exhibit in preparing your report?</p> <p>5 A. It may have been brought to my</p> <p>6 attention. Oh, yes. I did look at it in</p> <p>7 preparing my report, yes.</p> <p>8 Q. And why didn't you reference it?</p> <p>9 A. I don't know. If that -- if that</p> <p>10 was an oversight, I apologize.</p> <p>11 Q. You agree you didn't even reference</p> <p>12 it in the materials that you reviewed, right?</p> <p>13 MS. PARFITT: Objection.</p> <p>14 Form.</p> <p>15 THE WITNESS: Again, I don't</p> <p>16 -- I would have to verify that but...</p> <p>17 MR. HEGARTY: I'll mark as</p> <p>18 Exhibit No. 8 what I think is the same --</p> <p>19 THE WITNESS: I saw -- I saw</p> <p>20 a reference to -- to that defense exhibit</p> <p>21 perhaps in this other more general</p> <p>22 document, and I specifically requested</p> <p>23 the defense exhibit.</p> <p>24 (Document marked for</p> | <p>1 A. I will take your word for that.</p> <p>2 Q. Do you recall referencing it in the</p> <p>3 body of the report?</p> <p>4 A. I don't think I did.</p> <p>5 Q. And do you recall any -- do you see</p> <p>6 any reference in the list of materials that you</p> <p>7 reviewed to this document?</p> <p>8 A. No. I do remember it well and I've</p> <p>9 looked at it several times, and I have, you know,</p> <p>10 I have evaluated it and did not think it warranted</p> <p>11 direct inclusion in the report.</p> <p>12 Q. So you didn't -- is it your</p> <p>13 testimony that you do not believe this document,</p> <p>14 the NCI PDQ and what it says about talc and</p> <p>15 ovarian cancer, is a relevant document to your</p> <p>16 opinions in this case?</p> <p>17 A. I believe --</p> <p>18 DR. THOMPSON: Object to form.</p> <p>19 THE WITNESS: I believe it is</p> <p>20 relevant and I considered it. I did not</p> <p>21 think it was sufficiently important to</p> <p>22 reference directly. Be happy to discuss</p> <p>23 why.</p> <p>24 BY MR. HEGARTY:</p> |
| <p>1 identification as Sage Exhibit 8.)</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. I've marked as Exhibit 8 I think is</p> <p>4 the same document you've been looking at. It's</p> <p>5 the --</p> <p>6 A. Yes.</p> <p>7 Q. -- July 8, 2021 NCI Physician Data</p> <p>8 Query.</p> <p>9 Is this the same document you were</p> <p>10 referencing before?</p> <p>11 A. Yes. Yours is printed two-sided so</p> <p>12 it seems smaller.</p> <p>13 Q. Again, then you think -- strike</p> <p>14 that.</p> <p>15 Your testimony is that you did</p> <p>16 review this document prior to completing your</p> <p>17 expert report; is that correct?</p> <p>18 A. I believe so.</p> <p>19 DR. THOMPSON: Object to form.</p> <p>20 THE WITNESS: I believe so.</p> <p>21 BY MR. HEGARTY:</p> <p>22 Q. And you also agree you make no</p> <p>23 reference to it anywhere in your expert report,</p> <p>24 right?</p> | <p>1 Q. Well, did you find this document on</p> <p>2 your own or did plaintiffs' counsel provide it to</p> <p>3 you?</p> <p>4 A. I asked for this document because I</p> <p>5 believed it was either -- either I saw it or it</p> <p>6 was referenced in that Facts About Talc document</p> <p>7 collection that we were talking about before.</p> <p>8 Because I remember specifically asking, as I was</p> <p>9 asking for things that appeared to support the</p> <p>10 defense's arguments, I asked specifically about</p> <p>11 the NCI document, and that's how I got the NCI</p> <p>12 document.</p> <p>13 Q. Prior to reading something about the</p> <p>14 NCI PDQ document, Exhibit No. 8, had you ever been</p> <p>15 aware that NCI puts out Physician Data Query</p> <p>16 documents like this?</p> <p>17 A. In passing, probably, but I wouldn't</p> <p>18 have had a need for them in clinical practice.</p> <p>19 Q. If you turn over to page 19 of 20 in</p> <p>20 this document and the pages that are at the</p> <p>21 bottom --</p> <p>22 A. Yes.</p> <p>23 Q. -- that reference 19 of 20, it says</p> <p>24 that this PDQ in the -- let me back up.</p> |

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| <p>1 Under the purpose of this summary at 2 the top, it says that this is a summary for health 3 professionals -- let me read it specifically. 4 "This PDQ cancer information summary 5 for health professionals provides comprehensive 6 peer-reviewed evidence-based information about 7 ovarian, fallopian tube, and primary peritoneal 8 cancer." 9 Did I read that correctly? 10 A. Peritoneal cancer prevention but... 11 Q. Peritoneal cancer prevention. 12 And it goes on to say: 13 "It is intended as a resource to 14 inform and assist clinicians who care for cancer 15 patients." 16 Correct? 17 A. Correct. 18 Q. Then it goes down under the section 19 Reviewers and Updates that says: 20 "This summary is reviewed regularly 21 and updated as necessary by the PDQ Screening and 22 Prevention Editorial Board, which editorial 23 independent of the National Cancer Institute 24 (NCI)."</p> | <p>Page 178</p> <p>1 20, under section -- 2 A. Hold on. 3 Q. I'm sorry. 4 A. I have to go back to that. Yeah. 5 Q. Under the section Factored with 6 Inadequate Evidence of Association Risk of 7 Ovarian, Fallopian Tube, and Primary Peritoneal 8 Cancer, they specifically refer to perineal talc 9 exposure, correct? 10 A. Correct. 11 Q. The first line of that summary says: 12 "The weight of evidence does not 13 support an association between perineal talc 14 exposure and an increased risk of ovarian cancer." 15 Correct? 16 A. Yes, that's their view expressed in 17 this particular -- 18 Q. And they -- 19 A. -- summary. 20 Q. They don't -- they say there's not 21 even association in this statement, correct? 22 A. Now -- 23 DR. THOMPSON: Object to form. 24 THE WITNESS: -- again you are</p> |
| <p>Page 179</p> <p>1 Correct? 2 A. Yes. 3 Q. Then it goes on to say: 4 "This summary reflects an 5 independent review of literature and does not 6 represent a policy statement of NCI or the 7 National Institutes of Health (NIH)." 8 Correct? 9 A. Correct. 10 Q. Then it goes on to describe that: 11 "The board members review recently 12 published articles each month to determine whether 13 an article should" and then it describes what 14 their -- they can do with it, with the article, 15 discussing it, citing the text, replacing it with 16 an updated article, correct? 17 A. Certainly. It reminds me very much 18 of loosely electronic scientific American medicine 19 chapters that were published for many years and I 20 subscribed to. I don't subscribe anymore, but the 21 notion is that you want to have some current 22 clinical guidance and you provide a mechanism 23 for -- for updates periodically. 24 Q. Then if we turn over to page 13 of</p> | <p>Page 181</p> <p>1 correctly saying. They say in slightly 2 stylized form, the weight of evidence 3 does not support an association and that 4 results from the various case-controlled 5 and cohort studies are inconsistent, and 6 then they argue the points back and 7 forth. 8 It is -- this is to me 9 representative of much of the discussion 10 that I have seen in other sources. There 11 are, you know, several studies here that 12 they cite that show confidence intervals 13 that are all above 1. 14 Their, you know, so, again, 15 their conclusion and their categorization 16 is based on what they consider 17 inconsistencies and how they weight 18 particular sort of dose-response style 19 associations, or lack thereof. 20 There's nothing in this that 21 is sort of new information to me beyond 22 the other studies and syntheses that I 23 have -- I've read and from the language 24 you yourself quoted.</p> |

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| <p>1 This is an editorial exercise 2 with an NIH-funded publication resource. 3 It is not an official clinical guideline. 4 It is not an official policy statement. 5 One could speculate if you ask 6 the authors of this what they would 7 advise their own patients regarding 8 perineal application of talcum powder, I 9 don't know it would be that "don't worry 10 about it" is the response that you'd get. 11 This is exactly the sort of 12 material that I think is highly relevant, 13 but is also, first of all, embedded in -- 14 in a whole set of professional 15 relationships and traditions between 16 clinical physician practice and 17 government bodies that is really 18 tangential to my opinions about a 19 manufacturer's self-regulatory 20 obligations for cosmetics. 21 BY MR. HEGARTY: 22 Q. Assume for purposes of my 23 question -- and it's a hypothetical -- that this 24 statement is true that the weight of evidence does</p> | <p>Page 182</p> <p>1 information it does not currently 2 provide. 3 BY MR. HEGARTY: 4 Q. And what would that information be 5 if this statement is true? 6 A. At a minimum, the statement -- the 7 statement that safety has not been determined. 8 Because, again, this is, you know, a weight of 9 evidence, inconsistencies, and things that they 10 cite certainly do not substantiate the safety 11 of -- of talcum powder products. 12 Moreover, you know, the exact 13 contents of talcum powder products are not really 14 dealt with in this particular report, and I don't 15 really know what assumptions they've made. 16 Q. Have you told me in your responses 17 to the last few of my questions why you don't -- 18 did not cite this document in your report? 19 A. I -- 20 DR. THOMPSON: Object to form. 21 THE WITNESS: Yes. I've told 22 you that I reviewed it, and I did not 23 find that it added information in ways 24 that would modify my opinion.</p> |
| <p>Page 183</p> <p>1 not support an association between perineal talc 2 exposure and an increased risk of ovarian cancer. 3 So assume that's true. 4 Would it still be your opinion that 5 talcum powder is unsafe? 6 DR. THOMPSON: Object to form. 7 THE WITNESS: It would still 8 be my opinion that Johnson & Johnson has 9 not complied with its regulatory 10 obligations regarding information, and 11 there's a whole lot of ambiguities in 12 this particular statement. 13 BY MR. HEGARTY: 14 Q. Again, assume for purposes of my 15 question that this -- that the statement I just 16 read to you is true. 17 Is it still your opinion that talcum 18 powder products should contain a warning about the 19 risk of ovarian cancer? 20 DR. THOMPSON: Object to form. 21 THE WITNESS: If this 22 statement were true as written, it is 23 still my opinion that Johnson & Johnson 24 is required to provide consumers with</p> | <p>Page 185</p> <p>1 BY MR. HEGARTY: 2 Q. Is that what your standard was for 3 citing material is whether it would modify your 4 opinions? 5 DR. THOMPSON: Object to form. 6 THE WITNESS: One's -- one 7 formulates one's opinions and modifies 8 one's opinions in light of new evidence. 9 If this is a piece of evidence 10 I'm being presented with, if it is 11 information that I think needs to be 12 conveyed to the audience of my report on 13 its own, I might include it. 14 But in terms of, is it 15 altering my then present analysis, if it 16 doesn't alter it, I have no other reason 17 to cite it, and that is simply a Bayesian 18 approach to formulating and modifying 19 conclusions. 20 If you're suggesting that 21 somehow I had decided in advance what my 22 conclusions are, I would strongly 23 disagree. 24 BY MR. HEGARTY:</p> |

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| <p>1 Q. Well, I think the reader will 2 interpret that, but let me point this out. 3 You did cite to IARC in your report, 4 correct? 5 A. Yes. 6 Q. And what it said about talcum powder 7 use and ovarian cancer, correct? 8 A. Yes. 9 Q. You did cite to FDA in your report 10 and what it said about talcum powder use and 11 ovarian cancer, correct? 12 A. Yes. 13 Q. Those -- and you do cite to NIOSH 14 and what it says about asbestos exposure and risk, 15 correct? 16 A. Indirectly in the footnote that you 17 read. I don't -- I don't emphasize a discussion 18 of the occupational hazards here, though I -- I do 19 think that the NIOSH conclusions and the way in 20 which the talc mining companies responded to them 21 in terms of worker protection are informative in 22 this case. 23 Q. So you cite to IARC, you cite to 24 FDA, you cite to NIOSH, but you don't cite to NCI,</p> | <p>Page 186</p> <p>1 report that are not policy statements, right? 2 A. Yes. 3 Q. You cite to medical literature, 4 right? 5 A. Yes. 6 Q. Not a policy statement, is it? 7 A. No. 8 Q. So this document, though, you chose, 9 unlike some other articles that you cited, not to 10 cite, correct? 11 DR. THOMPSON: Object to form. 12 THE WITNESS: I didn't 13 affirmatively decide not to cite it. It 14 did not rise to the level where I felt 15 induced to cite it. 16 MR. HEGARTY: Let me show you 17 what I've marked as Exhibit No. 9. 18 (Document marked for 19 identification as Sage Exhibit 9.) 20 BY MR. HEGARTY: 21 Q. This is the PDQ Screening and 22 Prevention Editorial Board for the PDQ that we 23 marked as Exhibit No. 8. 24 Have you seen this list of board</p> |
| <p>1 correct? 2 A. Again -- 3 DR. THOMPSON: Object to form. 4 THE WITNESS: Again, I really 5 have to be clear that this is a 6 NCI-supported journal that follows a 7 perfectly reasonable clinical update 8 process. It is not a statement of the 9 NCI, and the language that you read 10 confirmed that. 11 BY MR. HEGARTY: 12 Q. So it's your opinion that a reader 13 looking at your report would not be interested in 14 what the NCI PDQ has to say about talcum powder 15 use and ovarian cancer? 16 MS. PARFITT: Objection. 17 DR. THOMPSON: Object to form. 18 THE WITNESS: It's my opinion 19 that I might be misleading a reader of my 20 report to suggest that an NCI -- that 21 this particular NCI document is a policy 22 statement of NCI, which it's not. 23 BY MR. HEGARTY: 24 Q. You cite to other material in your</p> | <p>Page 187</p> <p>1 members? 2 A. I have not. I have a medical school 3 classmate on the list. 4 Q. Who is that? 5 A. Joann Elmore. 6 Q. She's got a Master of Public Health, 7 right? 8 A. Yes, she does. 9 Q. You do not have a Master of Public 10 Health, right? 11 A. I do not. 12 Q. And Joann Elmore, do you respect her 13 as an epidemiologist? 14 A. As an epidemiologist? I would have 15 to go back and talk to her in a few years, but I 16 would have to go back and see what her work is. 17 But, yes, I respect her. I respect everybody on 18 this list. 19 But that's not the same thing as 20 saying that this particular statement of the 21 literature is in any sense definitive, in any 22 sense a policy statement, and I think on its own 23 terms an informed reader would -- would not simply 24 take their categorization at face value.</p> |

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| <p>1 As I said, I suspect that if you 2 asked the individuals who actually wrote this 3 article what they would advise their own patients, 4 I don't think "don't worry about it" would be the 5 answer from all of them, but that's just my 6 professional opinion.</p> <p>7 Q. Do you know any of the other 8 individuals on this list?</p> <p>9 A. Hmm.</p> <p>10 (Reviews document.)</p> <p>11 I suspect I know who David 12 Ransohoff's father was but, no.</p> <p>13 Q. Did you contact any of these 14 individuals about the NCI PDQ?</p> <p>15 A. No.</p> <p>16 Q. Did you even look at this editorial 17 board before preparing your report?</p> <p>18 A. No.</p> <p>19 Q. And the board members, as it says in 20 this document, represents -- represent the field 21 of oncology, cancer prevention, cancer screening, 22 hematology, radiology, urology, statistics, 23 epidemiology, and economics, correct?</p> <p>24 A. That's what it says.</p> | <p>1 Q. Do you know who the CDC is?</p> <p>2 A. I do.</p> <p>3 Q. Do you know who the SGO is, the 4 Society of Gynecologic Oncologists?</p> <p>5 A. I never heard it with the acronym.</p> <p>6 I've heard of the Society of Gynecologic 7 Oncologists.</p> <p>8 Q. Do you know who ACOG is, the 9 American College of --</p> <p>10 A. I know who ACOG --</p> <p>11 Q. -- Obstetricians and Gynecologists?</p> <p>12 A. Sorry to interrupt you.</p> <p>13 Yes, I know who ACOG is.</p> <p>14 Q. Did you review their list of risk 15 factors for ovarian cancer?</p> <p>16 A. It's possible I did. I don't -- I 17 don't recall. If I -- if I had been looking 18 casually in my very initial investigations before 19 deciding whether or not to offer an opinion in 20 this case, ACOG would have been the household name 21 for me, and if I went to one place, that's where I 22 would have gone. But I don't know that I found 23 anything.</p> <p>24 Q. Do you know that ACOG does not list</p> |
| <p>1 Q. You don't represent any of those 2 fields, correct?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: I certainly 5 have expertise in cancer prevention from 6 the work I've done. I have expertise in 7 cancer screening from the work I've done. 8 I have some statistical expertise, some 9 epidemiological expertise, and a whole 10 lot of economic expertise.</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. Okay.</p> <p>13 A. Do I practice any of these as my 14 dominant profession? No.</p> <p>15 Q. Is it your contention that the 16 editorial board members did not properly review 17 the medical literature to come to the statements 18 that they set out in the PDQ we marked as Exhibit 19 No. 8?</p> <p>20 DR. THOMPSON: Object to form.</p> <p>21 THE WITNESS: I have no such 22 opinion, and I think it is tangential to 23 my opinions in this case.</p> <p>24 BY MR. HEGARTY:</p> | <p>1 talc as a risk factor for ovarian cancer?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: Again, I can't 4 recall. All of this, you know, is in 5 some sense tangential to, you know, the 6 fundamental questions in my opinion.</p> <p>7 BY MR. HEGARTY:</p> <p>8 Q. Before being hired by the 9 plaintiffs' lawyers to work on this case, you had 10 never written anything about talc, correct?</p> <p>11 A. Correct.</p> <p>12 Q. You never commented on talc, 13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. Before being hired by plaintiffs' 16 lawyers in this case, you had never written 17 anything about any cosmetic product, correct?</p> <p>18 DR. THOMPSON: Object to form.</p> <p>19 THE WITNESS: Anything that 20 was solely a cosmetic product?</p> <p>21 BY MR. HEGARTY:</p> <p>22 Q. Correct.</p> <p>23 A. No.</p> <p>24 Q. Before being hired to testify on</p> |

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| <p>1 behalf of plaintiffs in this case, you had never 2 written anything about asbestos, correct? 3 DR. THOMPSON: Object to form. 4 THE WITNESS: That's probably 5 correct. I'd have to go see. I suspect 6 that in articles that I've written, I've 7 made references or comparative references 8 to asbestos litigation. It would be 9 unavoidable given how much regulatory 10 health and safety work I've done.</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. I think we did a search for your 13 name and asbestos and didn't come up with 14 anything.</p> <p>15 A. Good to know. Thank you. (Laugh).</p> <p>16 Q. Do you recall ever talking about 17 asbestos in any article you've ever written?</p> <p>18 A. I don't.</p> <p>19 DR. THOMPSON: Object to form. 20 THE WITNESS: I'm pretty sure 21 I've done it in passing because, as I 22 said, you know, if you're writing about 23 sort of major product-related personal 24 injury litigation, chances are you made</p> | <p>Page 194</p> <p>1 activities and disclosure obligations, 2 and also about First Amendment claims 3 involved in government regulation of 4 information.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. And my question is specifically as 7 it relates to a cosmetic product.</p> <p>8 A. Again, it's not that I can recall in 9 the sense it would have been in passing.</p> <p>10 Q. Have you ever written anything in 11 the published medical literature or the literature 12 -- let me -- let me ask it a different way.</p> <p>13 Have you ever published an article 14 or anything, any published document that talks 15 about ovarian cancer?</p> <p>16 A. Hmm.</p> <p>17 DR. THOMPSON: Object to form. 18 THE WITNESS: Again, not that 19 I can recall and probably not.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. Have you ever spoken to an audience 22 about talcum powder?</p> <p>23 A. No.</p> <p>24 Q. Have you ever spoken to an audience</p> |
| <p>Page 195</p> <p>1 reference to asbestos. But if you can't 2 find it, then it may not exist.</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. Have you ever written anything in 5 the published literature about fragrance?</p> <p>6 A. No.</p> <p>7 Q. How about heavy metals?</p> <p>8 A. No.</p> <p>9 Q. Have you ever written anything in 10 the published literature about the manufacturers 11 who make cosmetic products? As it relates to 12 their manufacture of cosmetic.</p> <p>13 A. Oh. No.</p> <p>14 DR. THOMPSON: Object to form.</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. Have you ever written anything on 17 the development, manufacture, marketing, or sale 18 of any cosmetic product?</p> <p>19 DR. THOMPSON: Object to form. 20 THE WITNESS: Not that I can 21 recall. I have to answer it that way 22 because when we're talking about 23 marketing activities, I write a whole lot 24 about relationship between marketing</p> | <p>Page 197</p> <p>1 about asbestos?</p> <p>2 A. No.</p> <p>3 Q. Have you ever spoken to an audience 4 about heavy metals?</p> <p>5 A. No.</p> <p>6 Q. Fragrances?</p> <p>7 A. I have never spoken to an audience 8 about fragrances.</p> <p>9 Q. Have you ever spoken to an audience 10 about ovarian cancer?</p> <p>11 A. In passing, yes.</p> <p>12 Q. How have you done so in passing?</p> <p>13 A. About -- so I would use ovarian 14 cancer often as an example for my regulatory 15 theory classes on risk framing issues, and 16 specifically telling the story of Gilda Radner's 17 ovarian cancer and the misperception that many -- 18 that the general public took away from that that 19 ovarian cancer was somehow preferentially a 20 disease of younger women when it's actually a 21 disease of older women. So it would have been a 22 common anecdote I would use.</p> <p>23 I actually teach a whole lot about 24 cancer prevention and -- and cancer screening</p> |

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| <p style="text-align: right;">Page 198</p> <p>1 tests in my regulatory theory classes every time I 2 teach them. 3 Q. Have you ever spoken to an audience 4 about the causes of ovarian cancer? 5 A. No. 6 Q. Have you ever taught any courses 7 where talc was discussed? 8 A. No. 9 Q. Where asbestos was part of the 10 course? 11 A. Again, not that I can recall, but 12 it's a common example of, you know, I think 13 probably in discussing Stephen Jay Gould's 14 non-asbestos mesothelioma. 15 Q. You're not an oncologist, correct? 16 A. Correct. 17 Q. You're not a gynecologist, correct? 18 A. Correct. 19 Q. You're not an expert in the overall 20 field of ovarian cancer, correct? 21 A. I'm not a clinical or molecular 22 expert, cellular expert in ovarian cancer, no. 23 Q. You're not an expert on the risk 24 factors for ovarian cancer, correct?</p> | <p>1 but ovarian cancer, no. 2 Q. You never treated a patient for 3 ovarian cancer, correct? 4 A. I'm not sure of that, but it 5 wouldn't have been the primary diagnosis. I 6 probably have treated a patient who had prior -- 7 previously been diagnosed with ovarian cancer. 8 Q. My question, though, is: Have you 9 ever treated a patient for her ovarian cancer? 10 A. No. 11 Q. Have you ever treated a patient for 12 mesothelioma? 13 A. No. 14 Q. Have you ever treated a patient for 15 peritoneal mesothelioma? 16 A. No. 17 Q. Have you ever diagnosed a patient 18 with an asbestos-related disease? 19 A. That's really interesting. 20 I did a lot of work at the Palo Alto 21 VA hospital, and it was a World War II era patient 22 base. 23 Not that I can recall. 24 Q. Do you know what asbestosis is?</p> |
| <p style="text-align: right;">Page 199</p> <p>1 A. I evaluate risk factors in -- for 2 cancer in a lot of the work I do. So I haven't 3 applied that expertise to ovarian cancer; but, 4 again, I reiterate that I'm not offering a medical 5 opinion or epidemiological opinion on causation. 6 Q. Can you cite for me the risk factors 7 for serous invasive ovarian cancer? 8 DR. THOMPSON: Object to form. 9 THE WITNESS: Off the top of 10 my head, no. I, you know, can suggest 11 that some of them have to do with parity. 12 Some of them have to do with various 13 exposures. Some of them probably have to 14 do with family history. 15 But I would have to look them 16 up, as I would look up risk factors for 17 pretty much anything. 18 BY MR. HEGARTY: 19 Q. You never performed any research on 20 ovarian cancer, correct? 21 A. No. 22 Q. You've never been the doctor who 23 diagnosed a patient's ovarian cancer, correct? 24 A. I have diagnosed patients' cancers,</p> | <p>1 A. Yes. 2 Q. Do you know what pleural plaques 3 are? 4 A. I can -- I can imagine what pleural 5 plaques are. I don't -- don't know if I've used 6 that term in a clinical setting. 7 Q. Do you know what ferruginous bodies 8 are? 9 A. Apparently not because I'll need you 10 to -- 11 Q. Ferruginous bodies. Do you not? 12 A. Ferruginous? I do not. 13 Q. If a woman needed to be evaluated 14 for a possible case of ovarian cancer, no one 15 would refer them to you, right? 16 A. That would be correct. 17 Q. If someone did, you would refer them 18 to someone else, right? 19 A. With alacrity. 20 Q. No one has ever sought out your 21 consultation regarding a patient with ovarian 22 cancer, correct? 23 A. No one -- as we've established 24 repeated -- repeatedly, I do not have an active</p> |

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| <p>1 clinical practice. I do not have sort of subfield 2 specialization in gynecology or obstetrics or in 3 oncology; but in the course of my teaching and 4 research and scholarly work, I encounter all of 5 these diseases and tests, symptoms, risk factors 6 and, frankly, access to and cost of treatment.</p> <p>7 Q. You never came to the opinion that 8 asbestos caused any patient's ovarian cancer, 9 correct?</p> <p>10 A. In this -- in this instance, I will 11 rely on multiple statements about asbestos as a 12 risk factor for ovarian cancer, as for other 13 cancers.</p> <p>14 Q. No. My question is very specific. 15 You never came to the opinion that 16 asbestos caused any particular patient's ovarian 17 cancer, correct?</p> <p>18 A. That would follow directly from not 19 having treated a patient for ovarian cancer.</p> <p>20 Q. You've never discussed the risk 21 factors of ovarian cancer with a patient, correct?</p> <p>22 A. Correct.</p> <p>23 Q. You've never talked to a patient 24 about talcum powder use, correct?</p> | <p>Page 202</p> <p>1 Q. When is the last time you went to a 2 meeting of a medical society?</p> <p>3 A. Probably about three years ago and 4 sat in on a whole variety of interesting 5 radiologic sessions, in addition to the one that I 6 spoke out on on policy issues. I have a basic 7 principle that I don't just go in and out when I 8 speak, and I always sit and listen to things.</p> <p>9 Q. Have you ever been involved in any 10 published article related to the female 11 reproductive tract?</p> <p>12 A. No.</p> <p>13 DR. THOMPSON: Object to form.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. In fact, you never published a 16 medical article, correct?</p> <p>17 A. Not correct. I have published 18 medical articles.</p> <p>19 Q. You published medical article about 20 the clinical practice of medicine?</p> <p>21 A. Yes. When I -- when I was in 22 medical school, I was lead author on articles 23 about intensive care practice and about urologic 24 practice. They emphasized the outcomes and the</p> |
| <p>Page 203</p> <p>1 A. Not -- not that I can recall.</p> <p>2 Q. Have you ever recommended to any 3 physician that they advise against talcum powder 4 use?</p> <p>5 A. No.</p> <p>6 Q. Have you ever told anybody to stop 7 using talcum powder?</p> <p>8 A. I certainly would now.</p> <p>9 Q. My question is: Prior to today, 10 have you ever told any person to stop using talcum 11 powder?</p> <p>12 A. No. I have evaluated mentally my 13 own brief talcum powder use wondering.</p> <p>14 Q. You don't belong to any medical 15 organizations currently, do you?</p> <p>16 A. Yes.</p> <p>17 Q. What medical organization do you 18 belong to?</p> <p>19 A. I'm an AMA member and have been 20 forever. I'm trying to think what else that would 21 qualify as a medical organization. But, I mean, 22 again, I'm a -- I'm an elected member of the 23 National Academy of Medicine. So I think I have 24 medical bona fides.</p> | <p>Page 205</p> <p>1 cost-related care choices. They weren't 2 generating clinical practice guidelines, if you 3 will; but, yes, they are -- they were 4 fundamentally clinical articles.</p> <p>5 Q. And none of those articles had 6 anything to do with the reproductive tract, female 7 reproductive tract, correct?</p> <p>8 A. That's correct. I mean, obviously 9 the urologic article had to do with male 10 reproductive tract or reproductive organs.</p> <p>11 Q. You're not an expert in talc, 12 correct?</p> <p>13 DR. THOMPSON: Object to form.</p> <p>14 THE WITNESS: Could you ask 15 that in a way that I know what -- what 16 piece of the discipline you're interested 17 in?</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. Well, would you call yourself an 20 expert in talcum powder?</p> <p>21 A. No.</p> <p>22 DR. THOMPSON: Object to form.</p> <p>23 THE WITNESS: No.</p> <p>24 BY MR. HEGARTY:</p> |

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| <p>1 Q. Would you call yourself an expert in 2 asbestos?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. Can you name the 6 types of 7 regulated asbestos?</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: Offhand, no. I 10 can pronounce them, I believe, you know.</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. Can you tell me the difference 13 between an amphibole and a serpentine form of 14 asbestos?</p> <p>15 DR. THOMPSON: Object to form.</p> <p>16 THE WITNESS: 17 Mineralogically, no. I know those are 18 two of the forms.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. You know what the most commercially 21 used asbestos was?</p> <p>22 DR. THOMPSON: Object to form.</p> <p>23 THE WITNESS: I have read -- 24 read that. I don't recall.</p> | <p>1 Q. Have you ever conducted an 2 epidemiologic study?</p> <p>3 A. A lot of the research that I do uses 4 the quantitative techniques that are common in 5 epidemiology. I haven't done -- I haven't been an 6 author or coauthor of something that is sort of a 7 primary epidemiological study.</p> <p>8 Q. Have you ever published a review of 9 epidemiologic evidence?</p> <p>10 A. No.</p> <p>11 Q. You're not an expert on the testing 12 of -- of talc for the presence of asbestos, 13 correct?</p> <p>14 DR. THOMPSON: Object to form.</p> <p>15 THE WITNESS: Correct.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. You're not an expert in geology, 18 correct?</p> <p>19 A. Again, I have preparation and 20 interest in geology. So there are areas of 21 geology that I have far more than lay credentials 22 with respect to.</p> <p>23 Q. Would you call yourself a geologist?</p> <p>24 A. No.</p> |
| <p>1 BY MR. HEGARTY:</p> <p>2 Q. Did you analyze the toxicities of 3 asbestos across the various forms?</p> <p>4 DR. THOMPSON: Object to form.</p> <p>5 THE WITNESS: No, but nothing 6 in my opinion relates to my having done 7 any of this personally.</p> <p>8 BY MR. HEGARTY:</p> <p>9 Q. You're not a toxicologist, correct?</p> <p>10 A. I am -- correct.</p> <p>11 Q. You're not an expert in fragrances, 12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. You're not a genesis -- geneticist, 15 correct?</p> <p>16 A. I'm not a geneticist.</p> <p>17 Q. Not a mineralogist, correct?</p> <p>18 A. I took two geology classes in 19 college, but I'm not a mineralogist.</p> <p>20 Q. You've had no formal epidemiologic 21 training, correct?</p> <p>22 A. I've had some epidemiologic training 23 in medical school as, you know, consequence to 24 receiving a medical school.</p> | <p>1 Q. You're not an industrial hygienist, 2 correct?</p> <p>3 A. Correct, but, again, there is 4 considerable overlap; but I have experience with 5 OSHA regulations and practices.</p> <p>6 Q. You're not an expert in Johnson's 7 Baby Powder, are you?</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: I believe it 10 was applied to me in early childhood but, 11 no.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. Do you know where Johnson & Johnson 14 has mined its talc for its Johnson's Baby Powder 15 over the years?</p> <p>16 A. I have read that in connection 17 with -- with these issues. I had no prior 18 knowledge of that.</p> <p>19 Q. Do you know where Johnson & Johnson 20 currently obtains its talcum powder for its baby 21 powder products?</p> <p>22 A. For the products it doesn't sell 23 here? I don't know.</p> <p>24 Q. Well, you understand that Johnson's</p> |

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| <p style="text-align: right;">Page 210</p> <p>1 Baby Powder is sold outside the United States and 2 Canada --</p> <p>3 A. Correct.</p> <p>4 Q. -- correct?</p> <p>5 A. Correct.</p> <p>6 Q. Do you know where Johnson & Johnson 7 sources its talc for those products?</p> <p>8 A. Again, I read this in passing in the 9 materials here.</p> <p>10 Q. Do you know what Johnson & Johnson's 11 testing protocols are for testing talc?</p> <p>12 A. I have read in the course of 13 preparing this report a lot regarding testing 14 protocols and history of testing protocols and the 15 different methods and the different thresholds for 16 detection, for sensitivities, you know, going -- 17 going back to the CIR J4-1 standard.</p> <p>18 This has all been very interesting 19 to read and I've learned a lot about it, you know. 20 So I -- I am glad to have that knowledge now and 21 to use that as part of, you know, the material 22 I've considered -- I've considered for these 23 opinions.</p> <p>24 Before -- before becoming involved</p> | <p>1 don't think I've ever spoken at one at the request 2 of a plaintiff's lawyer.</p> <p>3 Q. Have you ever been personally 4 involved in litigation?</p> <p>5 A. No.</p> <p>6 Q. Have you ever had any disciplinary 7 action initiated against you?</p> <p>8 A. No.</p> <p>9 MR. HEGARTY: You want to go 10 ahead and take that break.</p> <p>11 DR. THOMPSON: Sure.</p> <p>12 MR. HEGARTY: Take a break. 13 Let's go off the record.</p> <p>14 (Whereupon, at 12:03 p.m., a 15 luncheon recess was taken.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> |
| <p style="text-align: right;">Page 211</p> <p>1 in this case, no, I had no knowledge about how 2 Johnson & Johnson tested for asbestos.</p> <p>3 Q. And do you still -- do you currently 4 today, as of today, do you know the protocols that 5 Johnson & Johnson uses in testing its baby powder 6 for the presence of asbestos?</p> <p>7 A. Again, I've seen references to these 8 that were interesting to read. I couldn't -- 9 couldn't tell you.</p> <p>10 Q. With regard to ovarian cancer, are 11 you able to cite for me the subtypes besides 12 serous?</p> <p>13 A. Again, no. I would look them up. 14 That would be true for most cancers.</p> <p>15 Q. Do you know what the incidence rate 16 is of ovarian cancer in this country?</p> <p>17 A. I would only be guessing. Again, 18 this is sort of a fundamental aspect of expertise 19 is you don't really memorize a lot of things. You 20 look things up.</p> <p>21 Q. Have you ever spoken at a seminar at 22 the request of a plaintiff's lawyer?</p> <p>23 A. Hmm. I've spoken at many 24 conferences at the request of defense lawyers. I</p> | <p style="text-align: right;">Page 213</p> <p>1 AFTERNOON SESSION (12:52 p.m.)</p> <p>2 WILLIAM M. SAGE, MD, JD</p> <p>3 called for continued examination and, having been 4 previously duly sworn, was examined and testified 5 further as follows:</p> <p>6 EXAMINATION (CONTINUED).</p> <p>7 MR. HEGARTY: We're back on 8 the record.</p> <p>9 (Document marked for 10 identification as Sage Exhibit 10.)</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. Dr. Sage, over the break there was a 13 copy made of your current curriculum vitae, which 14 I marked as Exhibit No. 10.</p> <p>15 Would you tell me if Exhibit No. 10 16 is a copy of your current curriculum vitae?</p> <p>17 A. I will look to see if it has the 18 current visiting positions on it.</p> <p>19 Well, now we have the problem that 20 it only has the odd numbered pages in it.</p> <p>21 MS. PARFITT: Oh, great.</p> <p>22 Well, that was --</p> <p>23 MR. HEGARTY: All right.</p> <p>24</p> |

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| <p>1 Well, we'll -- we'll go ahead and replace 2 it at a break. 3 THE WITNESS: That could be a 4 yes. 5 BY MR. HEGARTY: 6 Q. Okay. 7 A. Would it help you to work with the 8 one I have? 9 Q. No. We'll go ahead. We need to 10 mark it for the -- for the record. The next break 11 we'll get to it. 12 Now, you mentioned the notice of 13 deposition. 14 Do you have a copy of that? 15 A. I do. 16 Q. What is the exhibit sticker on 17 there? 18 A. The exhibit sticker is 6. 19 Q. No. 6. 20 You said you now had a chance to 21 read the 18 paragraphs in that exhibit? 22 A. I have. 23 Q. Did you provide to your counsel for 24 purposes of that notice all the materials that you</p> | <p>Page 214</p> <p>1 a copy in front of you. 2 So do you have your report in front 3 of you? 4 A. I do. 5 Q. If we look at paragraph 10 of your 6 report, you say in the middle of the paragraph as 7 far as what you -- your research included and what 8 your review included were "relevant corporate 9 documents requested of counsel." 10 Do you see that phrase? 11 A. Yes. 12 Q. Are you saying that you specifically 13 asked for certain documents that were requested of 14 counsel for plaintiff? 15 A. I'm saying that apart from Facts 16 About Talc and other easily accessible corporate 17 documents from public websites, I didn't have 18 access to corporate documents from the litigation 19 that were relevant to the report; and I asked for 20 as many of those as was feasible to be produced to 21 me. 22 Q. And as best as you can, can you 23 reconstruct for me the language you were -- you 24 would have -- that you used in making that</p> |
| <p>Page 215</p> <p>1 have that are described in those paragraphs? 2 A. Yes, absolutely. 3 DR. THOMPSON: And -- 4 THE WITNESS: I had -- I had 5 gone through this orally. I just had not 6 seen the document before. 7 MR. HEGARTY: And Dr. Thompson 8 had something to say. 9 DR. THOMPSON: And just for 10 the record, we filed objections to the 11 production request. 12 MR. HEGARTY: And you've -- 13 this is directed to Dr. Thompson. 14 You produced the documents 15 that you considered were not 16 objectionable to the deposition notice? 17 DR. THOMPSON: Correct. 18 BY MR. HEGARTY: 19 Q. Doctor, I want to talk in more 20 detail about your expert witness report. 21 So I'm going to start walking 22 through the paragraphs. So you might want to have 23 that available. That's previously been marked as 24 Exhibit No. 4. Although I know you have your own</p> | <p>Page 217</p> <p>1 request? 2 A. I would have asked for -- sure, I 3 can tell you. Let me categorize that for you. 4 So category 1, as I've said 5 repeatedly, was making sure I had both sides of 6 the litigation story. So if I had been receiving, 7 say, scientific studies that were generally 8 supportive of the plaintiffs' case, I wanted to 9 know what was generally supportive of the 10 defendants' case, etc., etc., and the big picture 11 of the litigation. 12 Point 2 would be information related 13 to Johnson & Johnson's regulatory compliance, or 14 attitudes towards regulatory compliance, or 15 contacts between the sort of drug side of the 16 business in a regulatory sense and the people who 17 were responsible for decisions regarding 18 cosmetics. 19 And point 3 would have been because 20 so much of my report is about the informational 21 environment and informational obligations, you 22 know, the sort of marketing strategy, branding 23 strategies, changes in that, those sorts of 24 things. Some of which were provided to me in the</p> |

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| <p>Page 218</p> <p>1 form of deposition transcripts. Some of which may 2 have been, you know, exhibits to depositions. I 3 didn't track them in a formal way.</p> <p>4 Q. As you mentioned earlier, though, 5 you don't know the methods by which the attorneys 6 for the plaintiffs went about selecting documents 7 in response to those requests, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And you indicated previously that 10 you have not done any type of quality control 11 analysis yourself as to whether you did get all 12 the documents that you were thinking you would get 13 pursuant to these requests, correct?</p> <p>14 DR. THOMPSON: Object to form.</p> <p>15 THE WITNESS: I felt I had 16 the quality control analysis I needed to 17 do, which really had to do with issues 18 that appeared to be incompletely handled 19 or issues that seemed to be not 20 documented at all.</p> <p>21 I didn't feel like I was, you 22 know, looking for some type of smoking 23 gun documents. Not the type of report 24 that I'm producing.</p> | <p>Page 220</p> <p>1 end of the day I had everything I needed.</p> <p>2 Q. In terms of the materials you do 3 have in front of you today, did you put any notes 4 or make any markings on any of them?</p> <p>5 A. In preparation for the deposition, 6 yes. In preparation of the report, no.</p> <p>7 Q. I'm talking about specifically on 8 materials you have in front of you.</p> <p>9 Did you put any handwritten notes 10 into them?</p> <p>11 A. What I'm saying is -- so my own 12 report, in preparation for talking to you today, 13 as you can see I have, you know, underlined things 14 as reminders to myself --</p> <p>15 Q. Okay.</p> <p>16 A. -- in particular areas. I have not 17 annotated any of the other materials.</p> <p>18 Q. We're on, I think, Exhibit No. 11. 19 We'll designate for purposes of the deposition as 20 Exhibit No. 11 the notebook we have in front of 21 you. So we'll -- why don't we go ahead and make a 22 copy of that after the deposition, okay?</p> <p>23 A. Sure.</p> <p>24 (Notebook marked for</p> |
| <p>Page 219</p> <p>1 BY MR. HEGARTY:</p> <p>2 Q. Did you do any sort of formal task 3 where you intentionally looked for documents 4 yourself that thought you should have to see 5 whether you did get those?</p> <p>6 Do you follow my question where you 7 did some sort of quantitative or qualitative 8 analysis of the documents you were -- you received 9 to make sure that the methods used captured what 10 you were expecting to get?</p> <p>11 A. I follow your question.</p> <p>12 I actually found that the deposition 13 transcripts were in some ways a good guide to the 14 full scope of available information. I didn't try 15 to document them. I sort of made a practice of 16 not doing marks and highlights and notes on 17 things. It didn't seem practical to do so as 18 opposed to just drafting the report as, you know, 19 in sections and leaving areas of it for further 20 development.</p> <p>21 But I was -- I was quite 22 comfortable. This was, again, you know, this 23 skill of litigation is unfamiliar to me, and I was 24 working as best I could; but I felt like at the</p> | <p>Page 221</p> <p>1 identification as Sage Exhibit 11.)</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. And that would include any mark -- 4 the copies of any -- the copy of your report that 5 has some markings of yours on it, right?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay. I want to next look at 8 paragraph 11 of your report. You say in paragraph 9 11 or paragraph 11 you reference -- you make a 10 reference to highly profitable cosmetic -- "a 11 highly profitable cosmetic industry."</p> <p>12 Can you cite for me any information 13 you have on the profits of companies making 14 cosmetics over the 80 years you talk about in 15 paragraph 11?</p> <p>16 A. So -- so if -- if I may just in 17 terms of how I organized the report because it 18 would facilitate the conversation.</p> <p>19 The bolded unnumbered statements in 20 the discussion are how I organized the key points 21 of the report. Those are the major categories, 22 major insights, major conclusions and opinions. I 23 just used the paragraph numbering sort of for 24 convenience for the elaboration of those major</p> |

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| <p>1 points.</p> <p>2 I asked whether any particular</p> <p>3 format was required by the court or by convention,</p> <p>4 and I was told no. So this was the approach that</p> <p>5 I -- that I adopted. Just so in case if you</p> <p>6 wanted to talk about the major points, they'll be</p> <p>7 in bold but not in numbered paragraphs.</p> <p>8 With respect to profitability and</p> <p>9 change in the industry, this statement was a</p> <p>10 general statement consistent with statements that</p> <p>11 were made in sort of the FDA's own documents over</p> <p>12 the last couple of years talking about the need</p> <p>13 for a more structured approach to cosmetic</p> <p>14 regulation.</p> <p>15 Q. So ultimately the reason I ask that</p> <p>16 question is there's no citation to authority at</p> <p>17 the end of this paragraph.</p> <p>18 So my question is: What authority</p> <p>19 did you -- do you rely on for the statement --</p> <p>20 statements in paragraph 11?</p> <p>21 DR. THOMPSON: Object to form.</p> <p>22 THE WITNESS: Again, I will</p> <p>23 reiterate that there is no standard</p> <p>24 citation protocol that I'm aware of for</p> | <p>1 published in a 1995 article by Carr.</p> <p>2 Do you recall that?</p> <p>3 A. If you could refresh my --</p> <p>4 Q. Sure.</p> <p>5 A. -- recollection on that one.</p> <p>6 MR. HEGARTY: I'm going to</p> <p>7 show you what I've marked as Exhibit</p> <p>8 No. 12.</p> <p>9 (Document marked for</p> <p>10 identification as Sage Exhibit 12.)</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. This is a 1995 article author C.</p> <p>13 Jeffrey Carr in the Journal of Regulatory</p> <p>14 Toxicology and Pharmacology that summarizes a 1994</p> <p>15 Workshop attended by FDA personnel, industry</p> <p>16 personnel, scientists, and academics.</p> <p>17 Do you recall reading this article?</p> <p>18 It is referenced in your materials.</p> <p>19 A. Yeah, that's what I was just going</p> <p>20 to take a look to see where -- where it is</p> <p>21 referenced.</p> <p>22 It is referenced.</p> <p>23 Q. So my question --</p> <p>24 A. Yes, I recall --</p> |
| <p>1 this type of report.</p> <p>2 This is a statement that</p> <p>3 synthesizes things that I have read from</p> <p>4 the FDA and from other commentators. All</p> <p>5 of which has been produced to you as</p> <p>6 material to be considered.</p> <p>7 BY MR. HEGARTY:</p> <p>8 Q. In making that statement, you did</p> <p>9 not look at any specific profitability statements</p> <p>10 by any company, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Turning next to paragraph 13, you</p> <p>13 refer to a list of 100, as you call, dangerous --</p> <p>14 as is quoted "dangerous, deceptive, or worthless</p> <p>15 products."</p> <p>16 Talc was not on that list of hundred</p> <p>17 products, correct?</p> <p>18 A. I don't believe it was. This is a</p> <p>19 historical reference, and I certainly wouldn't be</p> <p>20 stating that talc was. I don't know why it would</p> <p>21 have been.</p> <p>22 Q. You have referenced in your report</p> <p>23 and you made reference earlier to an FDA Workshop</p> <p>24 in 1994 that ultimately whose results were</p> | <p>1 Page 223</p> <p>1 Q. -- do you recall reading this?</p> <p>2 A. Yes, I recall seeing this.</p> <p>3 Q. And that article reported on a</p> <p>4 two-day meeting that looked at the safety of talc</p> <p>5 in 1994, correct?</p> <p>6 A. Correct.</p> <p>7 Q. You were not at this meeting, right?</p> <p>8 A. Correct.</p> <p>9 Q. If you look at page 213 of this</p> <p>10 article.</p> <p>11 A. Yes.</p> <p>12 Q. On the -- in the right-hand column,</p> <p>13 first full paragraph beginning with the word --</p> <p>14 the name "Dr. Gilbertson."</p> <p>15 Do you see that paragraph?</p> <p>16 A. Yes.</p> <p>17 Q. The last line of that paragraph</p> <p>18 says:</p> <p>19 "In their joint evaluation, talc was</p> <p>20 proven to be among the safest of all consumer</p> <p>21 products."</p> <p>22 Do you see where I'm reading?</p> <p>23 A. I do. That language jumps out at me</p> <p>24 as -- as language that is often included in</p> |

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| <p>1 Johnson & Johnson's marketing materials.</p> <p>2 Q. But do you dispute that as of the</p> <p>3 time of this meeting, 1994, that talc has proven</p> <p>4 to be among the safest of all consumer products?</p> <p>5 DR. THOMPSON: Objection.</p> <p>6 Form.</p> <p>7 THE WITNESS: I have no</p> <p>8 particular reason to credit or doubt this</p> <p>9 particular statement in this particular</p> <p>10 journal at this time.</p> <p>11 It -- as a statement, it</p> <p>12 carries no particular authority for me,</p> <p>13 but I have no basis for doubting the</p> <p>14 sincerity of the people who wrote it.</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. You agree that this article is</p> <p>17 relevant to the analysis -- your analysis in your</p> <p>18 report, correct?</p> <p>19 DR. THOMPSON: Objection.</p> <p>20 Form.</p> <p>21 THE WITNESS: I would -- I</p> <p>22 would agree in -- I would agree -- well,</p> <p>23 let me -- let me go back and begin that</p> <p>24 answer again.</p> | <p>1 interesting for its value as scientific</p> <p>2 truth.</p> <p>3 I tend to look at all of this</p> <p>4 type of material in any regulatory</p> <p>5 context as telling a story. It's usually</p> <p>6 a very rich story about how regulators or</p> <p>7 potential regulators and regulated</p> <p>8 industries interact, including in such</p> <p>9 workshops.</p> <p>10 So it is interesting and</p> <p>11 relevant, but it is not going to be a</p> <p>12 major aspect of my conclusion or reliance</p> <p>13 regarding the safety of talc.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. If you would next turn over to page</p> <p>16 215 and look at the last line in the left-hand</p> <p>17 column carried over to the top of the right-hand</p> <p>18 column. In particular, the sentence reads:</p> <p>19 "Following the many issues raised by</p> <p>20 all presenters, the ensuing discussion generally</p> <p>21 agreed that, while some weak association between</p> <p>22 talc and ovarian tumors has been reported, it was</p> <p>23 not sufficient warning for concern."</p> <p>24 Do you see where I'm reading?</p> |
| <p>1 I would reiterate that I'm not</p> <p>2 offering an opinion as to causation. If</p> <p>3 you are pointing to this as, at the time,</p> <p>4 a casual synthesis of international</p> <p>5 standards with respect to the regulation</p> <p>6 of talc in consumer products, I would</p> <p>7 say, yes, it's relevant.</p> <p>8 BY MR. HEGARTY:</p> <p>9 Q. You do -- you do address in your</p> <p>10 report within the context of your focus safety of</p> <p>11 talcum powder, correct?</p> <p>12 A. Yes.</p> <p>13 Q. The statement I just read concerns</p> <p>14 the safety of talcum powder, correct?</p> <p>15 DR. THOMPSON: Objection.</p> <p>16 Form.</p> <p>17 THE WITNESS: Yes. It is in</p> <p>18 an executive summary. It carries exactly</p> <p>19 the weight that an executive summary of a</p> <p>20 conference proceeding carries for me in</p> <p>21 all my work, which is, it is relevant.</p> <p>22 It is interesting. It may be more</p> <p>23 interesting for its presence in this</p> <p>24 particular document than it is</p> | <p>1 A. I do.</p> <p>2 Q. Again, that is a statement that's</p> <p>3 relevant to the safety of talc as of the time of</p> <p>4 this workshop, correct?</p> <p>5 DR. THOMPSON: Object to form.</p> <p>6 THE WITNESS: Not</p> <p>7 necessarily. It's -- it's a summary of</p> <p>8 attendees' impressions of a particular</p> <p>9 workshop conversation. It carries the</p> <p>10 way that one would give that, which is</p> <p>11 that at least in the opinion of the</p> <p>12 person writing this summary I don't</p> <p>13 know -- and we could, I guess, look up,</p> <p>14 you know -- the discussion was generally</p> <p>15 -- generally not -- the discussions were</p> <p>16 generally unconcerned about talc safety</p> <p>17 at the time, but it's the discussions at</p> <p>18 a conference.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. You said the discussions were</p> <p>21 generally unconcerned, or what did you say? I</p> <p>22 didn't hear you.</p> <p>23 A. Yes. I was actually giving you the</p> <p>24 answer that I suspect you wanted in that instance</p> |

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| <p>Page 230</p> <p>1 is, yes, for the -- as reported by this observer 2 and published in this unreviewed executive summary 3 of one conference that I'm sure was, you know, 4 convened with -- with decent scientific 5 intentions, the discussions appeared to not be 6 terribly concerned about toxicity.</p> <p>7 Q. You say "unreviewed."</p> <p>8 You understand this is peer-reviewed 9 publication, right?</p> <p>10 A. Executive --</p> <p>11 DR. THOMPSON: Objection.</p> <p>12 THE WITNESS: -- summary --</p> <p>13 DR. THOMPSON: Whoa.</p> <p>14 Objection.</p> <p>15 THE WITNESS: In my 16 experience, executive summaries of 17 conference proceedings are not 18 peer-reviewed.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. Do you know with regard to this 21 document specifically whether it was 22 peer-reviewed?</p> <p>23 A. I do not know, but it would be my 24 professional view that anybody reading this</p> | <p>Page 232</p> <p>1 dispute that as of the time this publication was 2 made, 1995, concerning a meeting in 1994, that 3 these were proper conclusions to draw from the 4 evidence, the two conclusions we read from this 5 paper?</p> <p>6 DR. THOMPSON: Objection.</p> <p>7 Form.</p> <p>8 THE WITNESS: These 9 conclusions strike me as telling an 10 incomplete story, and I wouldn't attach 11 any particular scientific weight to 12 those, again, in the way that I would 13 sort of read a regulatory history and 14 make sort of expert judgments about a 15 regulatory process.</p> <p>16 I would say that as far as 17 this particular conference goes, it 18 appears that the discussion did not 19 result in inducing a sudden regulatory 20 change. This was a conference, as I -- 21 as I recall, jointly sponsored by the FDA 22 by industry and by an International 23 Society of Regulatory Toxicology and 24 Pharmacology, which I'm afraid I don't</p> |
| <p>Page 231</p> <p>1 summary would not expect it to have been reviewed.</p> <p>2 Q. Are you aware that there's a 3 transcript of the two-day proceedings?</p> <p>4 A. I hope so, yes. I am not aware of 5 that but...</p> <p>6 Q. Did you make a request for such a 7 transcript?</p> <p>8 A. No.</p> <p>9 Q. You don't cite to this -- this 10 article substantively in your expert report, 11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. From your analysis in this 14 case, do you dispute that as of the time of this 15 conference the statements that we looked at on 16 these two different pages?</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: I don't think I 19 understood that question.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. Sure.</p> <p>22 In your analysis of what you did for 23 purposes of this case, do you dispute -- or from 24 your analysis that you did in this case, do you</p> | <p>Page 233</p> <p>1 know anything about.</p> <p>2 And, you know, in terms of 3 whether this particular topic -- whether 4 this particular topic, you know, 5 promoted, you know, sort of prompted 6 action that would dislodge the then 7 prevalent regulatory standards, it 8 appears not.</p> <p>9 But that's more what I would 10 read this for. I don't -- I don't read 11 this document as, you know, authoritative 12 science. It's a conference proceeding.</p> <p>13 BY MR. HEGARTY:</p> <p>14 Q. Let's look at paragraph 15 of your 15 report.</p> <p>16 In that paragraph, you say a central 17 aspect of the federal cosmetics regulations are 18 "reliance on manufacturer and industry 19 self-regulation."</p> <p>20 Where in the regulations for 21 cosmetics is the phrase "self-regulation"?</p> <p>22 A. It is clear from FDA's website. It 23 is clear from every major address that has been 24 given either by the agency or, for that matter, by</p> |

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| <p>1 representatives of the cosmetic industry that the 2 principal form of governance of cosmetics is 3 self-governance assigned to industry often in some 4 fairly -- I should say the manufacturers and 5 sellers -- often in very specific ways. 6 But, no, the word "self-regulation" 7 doesn't appear in the statute or the regulation. 8 It does, interestingly, appear in the remarks and 9 the characterization of the regulatory process 10 from both the, you know, from the FDA and from the 11 CFTA or successor organizations. 12 This does not seem to be something 13 that is seriously contested by any party. 14 Q. You also state that FDA "lacks 15 routine authority to assure the safety of cosmetic 16 products or ingredients." 17 That's not true, is it? 18 DR. THOMPSON: Object to form. 19 THE WITNESS: That is true. 20 They do -- they do not have routine 21 authority. There are foundational 22 pillars of food, drug, and cosmetic 23 regulation in terms of adulteration and 24 misbranding. There are some subsidiary</p> | <p>Page 234</p> <p>1 A. Yes. 2 Q. FDA may seek a seizure of cosmetics 3 not in compliance with the law, correct? 4 A. Yes. 5 Q. FDA may initiate criminal action 6 against a person violating the law, correct? 7 A. Through the Department of Justice, 8 yes. 9 Q. FDA can also issue a warning letter 10 if they think a product is adulterated or 11 misbranded, correct? 12 A. Yes. 13 Q. FDA can also request that the 14 manufacturer recall a product, right? 15 A. The recall, a voluntary recall, 16 indeed, the FDA can request it. I could request 17 it just as much. 18 Q. If FDA asks for a recall of the 19 product, most manufacturers comply with that 20 request, correct? 21 A. Correct. 22 DR. THOMPSON: Objection. 23 BY MR. HEGARTY: 24 Q. FDA can also issue something called</p> |
| <p>1 authorities. 2 But comparing FDA's drug 3 regulatory regime to what it would have 4 to do in order to make a significant 5 effort to -- to verify the safety of 6 cosmetics to prevent injuries, or even to 7 address injuries that would occur, is not 8 what I would call routine authority. 9 BY MR. HEGARTY: 10 Q. Well, FDA can issue regulations that 11 require there to be a warning on a cosmetic, 12 correct? 13 A. Indeed. 14 Q. If FDA makes a determination that a 15 cosmetic product is adulterated or misbranded FDA 16 can take action, correct? 17 A. Yes. 18 Q. FDA can work through the Department 19 of Justice to remove adulterated or misbranded 20 products from the market, correct? 21 A. Yes. 22 Q. FDA may request a federal court to 23 issue a restraining order against the sale of a 24 cosmetic, correct?</p> | <p>Page 235</p> <p>Page 237</p> <p>1 a guidance document, right? 2 A. Yes. 3 Q. And a guidance document is, like it 4 sounds, it sets forth FDA's thinking about a type 5 of product or an ingredient, correct? 6 A. Yes. The resources available to do 7 this in the cosmetics domain are a tiny fraction 8 of the resource available to issue guidance 9 documents in, say, drug or device domains. 10 Q. And guidance document, while not 11 having the force of regulation, but it does tell 12 the industry very clearly what it should do in 13 regard to an ingredient, including what the 14 contents of a warning should be, correct? 15 A. Not necessarily. The -- the FDA 16 could issue a regulation that requires a warning. 17 That would go through an extensive procedure 18 regarding both issuance and evaluation and would 19 be subject to both formal and informal challenges. 20 All of this -- all of these 21 statements with which you've had me agree, some to 22 having residual authority to having some strong 23 pillars of obligation under the 1938 Act, which 24 really I will, you know, convey as my expert</p> |

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| <p>1 opinion are essentially informational obligations. 2 And there is a lot really -- and they really fall 3 exclusively on the manufacturers with very 4 little -- with very little advanced safeguards, 5 with very little continuing oversight, and with 6 almost no self-executing recourse.</p> <p>7 I would characterize the sort of 8 post-1938 cosmetic regime as very similar to the 9 pre-1938 drug regime.</p> <p>10 Q. Are you aware of situations where 11 FDA has issued a guidance document regarding 12 warnings as it relates to a cosmetic?</p> <p>13 A. I believe I have seen those. None 14 is immediately springing to mind, but, yes.</p> <p>15 Q. In particular, do you recall FDA 16 issuing a guidance document regarding certain 17 warnings that should be used on a product called 18 alpha hydroxy acids? Do you recall seeing it?</p> <p>19 A. I recall seeing it. I don't recall 20 the details right now.</p> <p>21 Q. But using a guidance document in 22 this sense is FDA's way of telling an industry 23 that a warning should be put on a label without 24 going through the entire process of issuing a</p> | <p>Page 238</p> <p>1 And I think this is something 2 that both FDA and the industry 3 acknowledge and each of them alters their 4 feelings about it from time to time based 5 on familiar and predictable factors, and 6 that's one reason we have another major 7 bill in Congress at the moment.</p> <p>8 BY MR. HEGARTY:</p> <p>9 Q. The FDA has not issued any guidance 10 document with regard to talcum powder products, 11 correct?</p> <p>12 A. I have not seen any -- any final 13 guidance documents. You've shown me, you know, 14 responses to Citizen's Petitions. I have shown 15 you internal -- internal evaluations from the 16 1990s.</p> <p>17 Q. And you would expect that FDA knows 18 about lawsuits brought over the use of talcum 19 powder products, correct?</p> <p>20 A. Of course.</p> <p>21 Q. And FDA knows about allegations of 22 finding asbestos in talc, right?</p> <p>23 DR. THOMPSON: Object to form.</p> <p>24 THE WITNESS: Yes.</p> |
| <p>1 regulation, correct?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: If I may -- if 4 I may make an analogy.</p> <p>5 The Federal Trade Commission 6 engages in competition advocacy all the 7 time where it sends letters to state 8 legislatures and to state regulators and 9 to other parties suggesting that 10 something they're doing is 11 anticompetitive, attempting to influence 12 them without the extreme measure of 13 filing an administrative action or a 14 federal lawsuit for a preliminary 15 injunction.</p> <p>16 I do not think that FDA's 17 authority over cosmetics is that much 18 greater than FTC's authority over 19 potentially anticompetitive, you know, 20 state laws and practices.</p> <p>21 Yes, it carries a lot of 22 weight. It will be taken seriously. 23 Sometimes it will be acted on, but the 24 whole point is, it's not self-executing.</p> | <p>Page 239</p> <p>1 BY MR. HEGARTY:</p> <p>2 Q. FDA knows about epidemiology?</p> <p>3 A. FDA has found -- let me supplement. 4 I'm sorry to interrupt.</p> <p>5 FDA has found asbestos in talc and 6 has requested voluntary recalls that have been 7 complied with by your client and others.</p> <p>8 Q. And we'll get to that.</p> <p>9 FDA knows about epidemiologic 10 studies and toxicology studies involving talc and 11 ovarian cancer, correct?</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 THE WITNESS: Yes. I mean, 14 this -- we are kind of 15 anthropomorphasizing FDA a little bit 16 here. I mean, we are -- FDA's cosmetic 17 oversight function is an office within a 18 Center that also deals with food safety.</p> <p>19 And in terms of rising to the 20 level where FDA will expend resources 21 given its relatively limited and -- and 22 tentative regulatory authorities, you 23 know, I don't really know how to say what 24 FDA knows.</p> |

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| <p>1 FDA may know a lot of things 2 in that it's on notice, but there may be 3 many obstacles to FDA action.</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. FDA has never issued a regulation 6 requiring that talcum powder products contain a 7 warning about the risk of ovarian cancer, correct?</p> <p>8 A. Correct.</p> <p>9 Q. FDA has never declared talc-based 10 slide patterns to be adulterated or misbranded, 11 correct?</p> <p>12 MS. PARFITT: Objection.</p> <p>13 Form.</p> <p>14 THE WITNESS: Correct.</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. FDA has never --</p> <p>17 A. I should -- may I correct that 18 statement?</p> <p>19 Q. Sure.</p> <p>20 A. So in connection with finding 21 asbestos in talcum powder products, FDA has 22 stated, if not formalized, a conclusion that those 23 products are adulterated.</p> <p>24 Q. Well, there's a particular</p> | <p>Page 242</p> <p>1 correct? 2 A. Exact -- 3 DR. THOMPSON: Objection.</p> <p>4 Form.</p> <p>5 THE WITNESS: I exactly 6 agree, but that is my point. These are 7 the two pillars of FDA authority. 8 Because there is so little other 9 authority conferred on FDA on the 10 cosmetic side of the FDCA and such that, 11 indeed, if FDA is committed to reaching a 12 result in case of something like asbestos 13 being found in talcum-based baby powder, 14 yes, it will make those findings because 15 that's how it goes to court and get the 16 results it seeks.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. You're aware that FDA has never 19 declared Johnson & Johnson talcum powder product 20 as being adulterated or misbranded?</p> <p>21 DR. THOMPSON: Objection.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. You know that, right?</p> <p>24 DR. THOMPSON: Object to form.</p> |
| <p>Page 243</p> <p>1 formalized finding or statement that FDA makes if 2 it finds a product adulterated or misbranded, 3 correct?</p> <p>4 A. It makes such statements in 5 anticipation of a judicial procedure that would 6 result in the outcome it wants. If it can obtain 7 that outcome less formally, it will not go to 8 those lengths.</p> <p>9 Q. FDA has never made the statement 10 that any talcum powder product manufactured by 11 Johnson & Johnson is adulterated or misbranded --</p> <p>12 DR. THOMPSON: Objection.</p> <p>13 Form.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. -- correct?</p> <p>16 A. I'm not sure of that insofar as the 17 2019 voluntary recall was -- was made with a clear 18 signal from the FDA that an unrecalled product 19 would be considered adulterated and further steps 20 would be taken. That was certainly my -- my 21 reading of what -- of the documents that I saw.</p> <p>22 Q. You know that the terms 23 "adulterated" and "misbranded" are terms of art 24 that FDA must use in order to take further action,</p> | <p>Page 245</p> <p>1 THE WITNESS: Again, I would 2 like to know what the statements were 3 made in 2019. I've read this, without -- 4 without reviewing those materials. 5 Because I know that there were statements 6 made that asbestos by the FDA or by FDA 7 senior officials that asbestos in talcum 8 powder would be an adulterant. 9 Did they -- did the FDA make a 10 formal declaration? I don't believe they 11 did.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. Has FDA ever issued a guidance 14 document suggesting that products containing talc 15 have a warning on them regarding ovarian cancer?</p> <p>16 A. Not to my knowledge.</p> <p>17 Q. If you look at paragraph 17 of your 18 report, you say in paragraph 17 that "FDA itself 19 recognizes its limitations in effectively 20 regulating cosmetics."</p> <p>21 And those are your words, not FDA's 22 words, correct?</p> <p>23 A. In paragraph 18, all of the quoted 24 testimony, which is what continues to paragraph 17</p> |

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| <p>1 thoughts, are FDA's words.</p> <p>2 Q. My question is specifically as it</p> <p>3 relates to 17.</p> <p>4 You cannot cite for me anyone from</p> <p>5 FDA stating that it has limitations -- using the</p> <p>6 words you use "limitations effectively regulating</p> <p>7 cosmetics"?</p> <p>8 A. Both the Susan -- the Susan Mayne</p> <p>9 testimony here, various statements from my</p> <p>10 acquaintance, Scott Gottlieb, as commissioner have</p> <p>11 all been, you know, in -- consistent with that</p> <p>12 statement.</p> <p>13 Q. Well, let's talk about what you say</p> <p>14 in paragraph 18 where you purport to provide</p> <p>15 relevant selected excerpts of the testimony of</p> <p>16 Susan Mayne, and I disagree that you did that and</p> <p>17 I'll show you why I disagree that you did that.</p> <p>18 And let me ask you first.</p> <p>19 Is it your methodology -- was it</p> <p>20 your methodology in your report to just cite</p> <p>21 portions of a document that help your subjective</p> <p>22 review, your subjective view and not give the</p> <p>23 reader an objective summary?</p> <p>24 DR. THOMPSON: Objection.</p> | <p>Page 246</p> <p>1 (Document marked for</p> <p>2 identification as Sage Exhibit 13.)</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. And the first statement I want to go</p> <p>5 to that you left out of your report is over on</p> <p>6 page 1 at the bottom, and in particular,</p> <p>7 Ms. Mayne's testimony in this document that you</p> <p>8 did not cite says:</p> <p>9 "We believe that most cosmetics on</p> <p>10 the market of the United States are indeed safe,</p> <p>11 and in our experience, most firms are responsible</p> <p>12 actors - they care about consumer safety and the</p> <p>13 reputation of their brands, and in those rare</p> <p>14 cases when safety issues do arise, many firms work</p> <p>15 with us cooperatively to address them."</p> <p>16 You didn't include that statement,</p> <p>17 did you?</p> <p>18 A. I completely -- I think that is a</p> <p>19 very well-crafted statement. I saw no reason to</p> <p>20 include that in this part of my report.</p> <p>21 Q. The next statement you didn't</p> <p>22 include is the one that is right after that:</p> <p>23 "We also understand that most</p> <p>24 ingredients used in cosmetic products have been</p> |
| <p>Page 247</p> <p>1 Form.</p> <p>2 THE WITNESS: The answer to</p> <p>3 that accusation is, of course not. The</p> <p>4 elaborate -- the elaboration is that my</p> <p>5 point is the FDA recognizes its</p> <p>6 limitations.</p> <p>7 I would also comment that no</p> <p>8 head of an agency stands up and gives a</p> <p>9 blanket condemnation of her or his own</p> <p>10 work. It's simply not done.</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. Well, there are portions of</p> <p>13 Ms. Mayne's testimony that are relevant that you</p> <p>14 didn't tell the reader, aren't there?</p> <p>15 MS. PARFITT: Objection.</p> <p>16 Form.</p> <p>17 DR. THOMPSON: Objection.</p> <p>18 Form.</p> <p>19 THE WITNESS: If you would</p> <p>20 like to show me something, which I think</p> <p>21 you would.</p> <p>22 MR. HEGARTY: I'll show you.</p> <p>23 I marked next as Exhibit No. 13 the</p> <p>24 statement you cited from Susan Mayne.</p> | <p>Page 249</p> <p>1 used in cosmetics for many decades, and we are not</p> <p>2 aware of safety concerns regarding most</p> <p>3 ingredients."</p> <p>4 You didn't include that statement?</p> <p>5 A. I did not.</p> <p>6 Q. If you look over to page 4 at the</p> <p>7 bottom of that page, second to last paragraph.</p> <p>8 "FDA evaluates concerns about</p> <p>9 ingredients or products based on currently</p> <p>10 available science and data, much of which is</p> <p>11 publicly available as FDA does not have authority</p> <p>12 to require companies to provide it with safety,</p> <p>13 compositional and other relevant information about</p> <p>14 cosmetics. FDA also supports and conducts</p> <p>15 research related to cosmetics safety to support</p> <p>16 our regulatory activities, as allowed by our</p> <p>17 resources. What we have safety concerns about</p> <p>18 ingredients we will act swiftly to inform and</p> <p>19 advise consumers of any identified public health</p> <p>20 risks."</p> <p>21 You did not include that statement</p> <p>22 in your report, did you?</p> <p>23 A. I did not. Though I do not think</p> <p>24 anything you read is inconsistent with my</p> |

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| <p>1 statement in paragraph 17 regarding limitations 2 and effectively regulated cosmetics.</p> <p>3 Q. And in the last line of that 4 paragraph -- I'm sorry -- page 4 says that: 5 "Ensuring the safety of cosmetics is 6 a high priority for us."</p> <p>7 You didn't include that statement, 8 did you?</p> <p>9 A. I did not.</p> <p>10 Q. FDA has never identified any health 11 -- any public health risks with talcum powder 12 products. True?</p> <p>13 DR. THOMPSON: Objection to 14 form.</p> <p>15 THE WITNESS: Again, if we go 16 to that internal guidance document, there 17 is concerning language there. And if we 18 go to the 2014 Citizen's Petition 19 response that we discussed earlier today, 20 there's concerning language there.</p> <p>21 So indeed FDA has expressed 22 its -- its doubts regarding safety.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. Well, FDA says in this document that</p> | <p>Page 252</p> <p>1 THE WITNESS: Yes. Yes, its 2 2019 recall of talcum powder -- talcum 3 powder products containing asbestos.</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. Besides that 2019 statement? 6 A. Direct -- directly consumer -- to 7 consumers, not to my knowledge.</p> <p>8 Q. So you in your previous answer 9 indicated that there's somehow -- that this 10 statement should somehow be taken with a grain of 11 salt because she's a political appointee.</p> <p>12 Is that what you're saying?</p> <p>13 DR. THOMPSON: Object to form.</p> <p>14 THE WITNESS: No, I'm sorry.</p> <p>15 I was thinking out loud.</p> <p>16 I concluded -- again, this is 17 verifiable. I know that Susan Mayne 18 retains the director -- directorship of 19 the Center at present. I said I do not 20 know whether she's a political appointee 21 or a career official. Could be either.</p> <p>22 No, that does not matter to my 23 answer.</p> <p>24 BY MR. HEGARTY:</p> |
| <p>Page 251</p> <p>1 I just read that it will "act swiftly to inform 2 and advise consumers of any identified public 3 health risk," right?</p> <p>4 And it has not done so with regard 5 to talcum powder products. True?</p> <p>6 A. With respect, this is a speech that 7 a senior -- I'm not sure -- I would imagine -- I 8 don't know if she's a career political appointee. 9 I would imagine she's career, but a senior 10 official director of -- of an FDA Center is making 11 in Congressional testimony. This statement is 12 crafted to serve that role very effectively.</p> <p>13 I have no basis in giving my expert 14 opinions on Johnson & Johnson's lack of compliance 15 with the its regulatory and self-regulatory 16 obligations regarding why particular lines are in 17 this statement. It strikes me as eminently 18 suitable and professional and appropriate for its 19 moment.</p> <p>20 Q. Well, has FDA done anything to 21 inform and advise consumers of any public health 22 risks with talcum powder products?</p> <p>23 DR. THOMPSON: Objection.</p> <p>24 Form.</p> | <p>Page 253</p> <p>1 Q. You just admitted that and FDA found 2 a public health risk through the finding -- its 3 finding of asbestos -- in what it believes was 4 finding of asbestos in a talcum powder bottle, it 5 took action, correct?</p> <p>6 DR. THOMPSON: Object to form.</p> <p>7 THE WITNESS: I think -- I 8 think we're -- we're diving down into the 9 weeds when the essence of the opinions I 10 offer, you know, really -- really have to 11 do with -- with the big picture.</p> <p>12 Everything that I have seen 13 and read from a number of sources, 14 including sources from industry over a 15 large number of years, identifies 16 cosmetics regulation as having very 17 limited statute -- statutory authority, 18 having very few directly self-executing 19 regulations, having very little FDA 20 supervisory oversight, and placing the 21 vast majority of the burden, really the 22 exclusive burden, on manufacturers and 23 sellers.</p> <p>24 Such that I reject your</p> |

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| <p>1 suggestions that FDA taking occasional 2 action shows that they will take all 3 necessary action or that them refraining 4 from action means that there are no 5 problems.</p> <p>6 That said, I am happy to 7 support the notion that most consumer 8 products that are sold in America are 9 sold by reputable companies trying to do 10 the best they can and turn out to be 11 safe. I certainly hope and expect that 12 to be the case.</p> <p>13 BY MR. HEGARTY:</p> <p>14 Q. Let me go back to sort of where we 15 started.</p> <p>16 You purported to say that you cited 17 relevant excerpts of the testimony of Susan Mayne 18 as it relates to any limitations on FDA's ability 19 to regulate the industry, but you didn't cite the 20 portion of the statement that we just read that 21 says, if FDA has safety concerns, it will act.</p> <p>22 Is it your testimony that that's not 23 relevant to the points you were making in this 24 part of your -- your report?</p> | <p>1 statements are not the relevant support 2 for the statement in paragraph 17.</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. Let's look paragraph 19.</p> <p>5 What is your reliance materials for 6 the statements that you make in that paragraph?</p> <p>7 A. Most of the reliance materials come 8 from the collection of important, well-edited, 9 well-selected historical materials on cosmetics 10 regulation that are in the Hutt, Merrill, and 11 Grossman legal casebook, which is the leading 12 casebook, you know. And I did some, you know, 13 subsequent, as we've discussed, you know, 14 exploration of some of the things that are cited. 15 Some of the controversies that are described. 16 Others come from statements that 17 have been made in the Congressional hearings that 18 are also cited more recently, but that postdate 19 the last edition of that casebook. 20 And it's been -- as a -- as an 21 expert in regulatory design and the regulatory 22 process, I can say that the forces that have 23 induced the cosmetics industry at different times 24 to take different positions on the extent of</p> |
| <p>1 DR. THOMPSON: Objection. 2 Form.</p> <p>3 THE WITNESS: I will defend 4 not only the contents, but the structure 5 of what I wrote here. I have a paragraph 6 that says the "FDA recognizes its 7 limitations" and then I have quotes that 8 support the recognition of the 9 limitations.</p> <p>10 There might be another section 11 of this or another report that talked 12 about the things that FDA does well or 13 right, but this is exactly what I think 14 it should be to support the statements I 15 made.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. You read the statements and I read 18 to you, and you intentionally chose to leave them 19 out of your report, correct?</p> <p>20 MS. PARFITT: Objection. 21 Form.</p> <p>22 DR. THOMPSON: Objection. 23 Form.</p> <p>24 THE WITNESS: Those</p> | <p>1 Page 255 1 federal government oversight are familiar and 2 predictable, and I would be happy to enumerate 3 them for you. 4 Q. You in your report, as it relates to 5 this paragraph, cite from no one at Johnson & 6 Johnson commenting on federal safety regulations, 7 correct? 8 DR. THOMPSON: Object to form. 9 THE WITNESS: I cannot 10 recall. Though I did observe when I 11 looked at the companies that are 12 supportive of the current 13 Feinstein-Collins legislation that 14 Johnson & Johnson is supportive of that 15 legislation. 16 BY MR. HEGARTY: 17 Q. In looking at paragraph number 20, 18 you cite the statements by the PCPC president. 19 Do you know that he's not authorized 20 to speak for Johnson & Johnson, correct? 21 A. Well, he's -- 22 DR. THOMPSON: Object to form. 23 THE WITNESS: I assume he's 24 the former president because this is</p> |

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| <p>1 historical material. If he's the current 2 president, I was not aware of that. 3 Again, sort of following the 4 way that I construct -- constructed this 5 report, 19 is a general statement that is 6 then documented in 20 and 21 and 22, 7 showing changes of position. 8 But, yes, I would assume that 9 the president of the industry trade 10 association has never been authorized to 11 speak for Johnson & Johnson. 12 BY MR. HEGARTY: 13 Q. And he talks about and makes 14 reference to "no unnecessary or burdensome 15 regulation." That's what you cite in your -- in 16 your paragraph. 17 Are you advocating in your report 18 that there should be unnecessary or burdensome 19 regulation on the cosmetic industry? 20 DR. THOMPSON: Objection. 21 Form. 22 THE WITNESS: No. (Laugh). 23 BY MR. HEGARTY: 24 Q. Okay. So is it your testimony that</p> | <p>Page 258</p> <p>1 What is the current number of FDA 2 personnel working in the Office of Cosmetics and 3 Colors? 4 A. I do not know. 5 Q. What was -- what were the numbers of 6 personnel working there between 2015 and 2020? 7 A. I do not know. It is still a small 8 office. 9 Q. What is the current budget for this 10 office for 2021? 11 A. I have seen that number in passing. 12 But if we go -- go back to paragraph 18, the 13 direct quote from Susan Mayne, "our program for 14 cosmetics is approximately \$10 million," which is 15 about 3 percent of just that one Center's annual 16 budget of \$327 million. And, undoubtedly, if we 17 were going to compare this to the drug or device 18 oversight budget, it would be a pittance. 19 I would also note in that connection 20 if we want to talk about budgets, which I'm more 21 than happy to do, that a major aspect of the 22 current Senate proposal is to institute user fees 23 on cosmetics companies, which is one way of 24 addressing the -- the budgetary challenges, very</p> <p>Page 259</p> <p>1 it is wrong to not want unnecessary or burdensome 2 regulation? 3 DR. THOMPSON: Objection. 4 Form. 5 THE WITNESS: I am citing his 6 position expressed in 1995, which differs 7 from the industry's position in 1998 8 described in paragraph 21, which differs 9 from the 2012 position described in 10 paragraph 22, and which almost certainly 11 would differ from the position today as 12 representing the industry's equivocations 13 regarding a more aggressive federal 14 regulatory role. 15 I would also note that the 16 1975 position regarding self-regulation 17 is that we will do this or perhaps give 18 the appearance of doing this in order to 19 forestall regulations, which in 1995 20 Mr. Kavanaugh, on behalf of the industry, 21 you know, in general opposed. 22 BY MR. HEGARTY: 23 Q. In paragraph 21, you make reference 24 to statements made as it relates to 1998.</p> |
| | <p>Page 260</p> <p>1 similar to what happened in the prescription drug 2 domain in the early 2000s. 3 Q. In this part of your report, is it 4 your contention that FDA has not brought 5 regulatory action regarding talcum powder products 6 because its resources are limited? 7 A. Would you ask that again, please? 8 Q. Sure. 9 Is it your contention as part of 10 this part of your report that FDA has not brought 11 regulatory action regarding talcum powder products 12 because its resources are limited? 13 DR. THOMPSON: Objection. 14 Form. 15 THE WITNESS: My contention 16 in this part of the report is to 17 emphasize the twin responsibilities of 18 information disclosure and manufacturer 19 self-governance, substantiation of safety 20 for products and for cosmetic products 21 and ingredients. 22 In this particular part of 23 this report, I'm not using this language 24 to make a specific suggestion about</p> |

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| <p>1 action or inaction regarding talc, but 2 indeed budgetary shortfalls causes 3 relatively little action in any cosmetic 4 domain.</p> <p>5 MR. HEGARTY: Do you mind if 6 we take a quick break?</p> <p>7 DR. THOMPSON: Sure. 8 (Recess: 1:42 p.m. - 9 1:51 p.m.)</p> <p>10 MR. HEGARTY: Okay. Let's go 11 back on the record.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. Okay. We are back on the record, 14 Doctor, and next paragraph I want to look at is 15 paragraph 26 of your report.</p> <p>16 A. Certainly.</p> <p>17 Q. Actually, it's paragraph 27.</p> <p>18 A. Okay.</p> <p>19 Q. You make the statement at the end 20 that Johnson's Baby Powder -- "Johnson & Johnson's 21 talcum powder products include other potentially 22 hazardous substances in varying amounts."</p> <p>23 What was your methodology for -- 24 well, first of all, before I ask that.</p> | <p>Page 262</p> <p>1 on Johnson's Baby Powder and Shower to Shower that 2 Johnson & Johnson has produced in this litigation, 3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. We've also established that you're 6 not an expert on the testing procedures for talc, 7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. In particular, there's a test that 10 is conducted on talc called XRD.</p> <p>11 Do you know what XRD is? X-ray 12 diffraction?</p> <p>13 A. If you take it away from the 14 acronym, I understand what x-ray diffraction is.</p> <p>15 Q. You're not an expert in x-ray 16 diffraction, correct?</p> <p>17 A. No.</p> <p>18 Q. You're not an expert in transmission 19 electron microscopy, correct?</p> <p>20 A. Again, I know the difference between 21 transmission and scanning electron microscopy; 22 but, no, I'm not a transmission microscopist.</p> <p>23 Q. You're not an expert in polarized 24 light microscopy, correct?</p> |
| <p>Page 263</p> <p>1 What potentially hazardous 2 substances are you referring to in that paragraph?</p> <p>3 A. Again, just forgive me because I 4 guess this should -- this should be evident, but, 5 again, to go to the structure of the report, 6 there's a bolded statement about paragraph 27.</p> <p>7 Paragraph 27 basically introduces a series of 8 paragraphs that provide the detail on paragraph 9 27.</p> <p>10 So those were the categories of 11 additional or incompletely specified or 12 potentially hazardous or hazardous substances that 13 either are or may be contained in talcum powder 14 products.</p> <p>15 Q. And your methodology for making that 16 conclusion was the review of the documents that we 17 talked about earlier in the deposition?</p> <p>18 A. Exactly.</p> <p>19 DR. THOMPSON: A late object 20 to form.</p> <p>21 MR. HEGARTY: That's okay.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. And we've already established that 24 you have not analyzed all of the testing documents</p> | <p>Page 265</p> <p>1 A. Correct.</p> <p>2 Q. You're not an expert in scanning 3 electron microscopy?</p> <p>4 A. As I just said, no.</p> <p>5 Q. And before being contacted by 6 counsel for plaintiffs in this case, you had never 7 considered any of those testing procedures that we 8 just talked about, correct?</p> <p>9 DR. THOMPSON: Object to form.</p> <p>10 THE WITNESS: I had never 11 considered any of those testing 12 procedures for talc. I have seen those 13 testing procedures in use or read about 14 them in use in various contexts over the 15 decades.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. If we look at -- well, let me back 18 up.</p> <p>19 You had never prior to being 20 contacted by plaintiffs' counsel commented in any 21 publication of yours or in any lecture or in any 22 class of yours on XRD, TEM, PLM, or SEM, correct?</p> <p>23 A. That is correct.</p> <p>24 Q. If we look at the next paragraph 28,</p> |

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| <p>1 in that paragraph you refer to something called 2 "platy talc" (indicates).</p> <p>3 Do you know where that phrase is 4 ever cited -- can you cite to me where that phrase 5 is cited in any publication?</p> <p>6 DR. THOMPSON: Object to form.</p> <p>7 THE WITNESS: I can't -- I 8 can't right now. I have seen 9 descriptions of it in various of the 10 documents that I have reviewed.</p> <p>11 The attempt here was not to be 12 exhaustive regarding terminology, but 13 where there were a couple of phrases that 14 seemed to be in common use for the same 15 substance, to put them in the same 16 paragraph.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. Do you consider yourself an expert 19 in IARC's processes and procedures for its review 20 of substances?</p> <p>21 A. No.</p> <p>22 Q. You've never been involved in an 23 IARC proceeding, correct?</p> <p>24 A. Correct.</p> | <p>Page 266</p> <p>1 consider asbestos, but geologically related in 2 terms of often being in the same deposits and at 3 least based on the IARC conclusions having similar 4 health hazards to asbestos.</p> <p>5 Q. You did not do a comprehensive 6 analysis of the literature on talc fibers and 7 ovarian cancer risk, correct?</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: I don't know 10 that anybody has done a lot of that 11 research because I think it's very hard 12 to do given that talc has not been 13 systematically assayed for fibrous 14 content.</p> <p>15 But I think my -- my belief 16 would be -- I guess my opinion would be 17 that to the extent that fibers are an 18 inevitable component of a talc deposit, 19 that there can be some very significant 20 associations between talc fibers and 21 ovarian cancer.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. You said that talc fibers are an 24 inevitable component of talc. I think that's what</p> |
| <p>1 Q. You've never before this report 2 cited to an IARC Monograph in any document you 3 prepared, correct?</p> <p>4 DR. THOMPSON: Object to form.</p> <p>5 THE WITNESS: Not that I 6 recall.</p> <p>7 BY MR. HEGARTY:</p> <p>8 Q. You had not read the IARC monographs 9 for talc not containing asbestosiform fibers and 10 asbestos prior to being contacted by counsel for 11 plaintiffs, correct?</p> <p>12 A. That is correct.</p> <p>13 Q. Next paragraph 29 begins by 14 referring to something called "fibrous 15 (asbestosiform) talc."</p> <p>16 What is your definition of "fibrous 17 (asbestosiform) talc"?</p> <p>18 A. So my understanding is that talc 19 that doesn't have the flat morphology that makes 20 it hydrophobic and generally, you know, useful in 21 something like baby powder can exist in various 22 fiber forms. And my review of the documents we 23 described refers to that as often "fibrous" or 24 "asbestosiform talc" distinct from what we would</p> | <p>Page 267</p> <p>1 you said.</p> <p>2 A. That's my --</p> <p>3 Q. What's your source -- what's your 4 source for that statement?</p> <p>5 A. That's my understanding based on the 6 documents. I, you know, can't say, you know, the 7 prevalence fiber count, the assays for talc 8 fibers. In fact, the assays for asbestos seem to 9 be contested and in flux, and there seems to be a 10 consensus, at least within the FDA, that there 11 needs to be some improvement to those standards.</p> <p>12 Q. You cite in this paragraph, that is 13 paragraph 29, to IARC's 2012 monograph.</p> <p>14 That 2012 monograph nowhere uses the 15 phrase "fibrous talc," does it?</p> <p>16 DR. THOMPSON: Object to form.</p> <p>17 THE WITNESS: I would -- I 18 would have to review it. The -- the 19 monograph on talc not containing 20 asbestosiform fibers -- hold on, figure out 21 where we are -- is an evaluation of the 22 platy talc.</p> <p>23 I reviewed all of this to see 24 how they were cabining the questions they</p> |

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| <p>1 were asked, and I made sort of note of 2 all of that for purposes of the report. 3 I am not giving either geology 4 opinions or opinions on causation, but I 5 noted the conclusions in the later IARC 6 regarding asbestos that -- that its 7 conclusions regarding asbestos would 8 equally apply to -- to what we'll call 9 "fibrous talc" but to non-asbestos fibers 10 occurring in otherwise platy talc. 11 BY MR. HEGARTY: 12 Q. You say in this paragraph 29 that: 13 "Asbestiform talc is classified 14 alongside asbestos in a 2012 IARC Monograph as 15 carcinogenic to humans (Group 1) and causing 16 ovarian cancer." 17 MR. HEGARTY: I marked as 18 Exhibit No. 14 a copy of that 2012 19 monograph. I didn't bring an extra 20 copy -- 21 DR. THOMPSON: That's all 22 right. 23 MR. HEGARTY: -- because I 24 couldn't carry it.</p> | <p>Page 270</p> <p>1 asbestiform fibers? 2 A. It's the asbestiform fibers in talc 3 containing asbestiform fibers, to be precise. 4 Q. So you're defining for purposes of 5 this paragraph talc containing asbestiform fibers 6 or -- I'm sorry. 7 You're defining in this paragraph 8 asbestiform talc as talc containing asbestiform 9 fibers, correct? 10 A. Those fibers in talc, yes. Again, 11 for my expert report, which we'll -- which draws 12 regulatory obligation and self-regulatory conduct 13 conclusions from the presence in talcum powder 14 products of asbestos and asbestiform fibers, I am 15 using the terms "asbestiform fibers," "talc 16 containing asbestiform fibers," and "fibrous talc" 17 to mean essentially the same thing. 18 If that is incorrect, I apologize, 19 but it's also something that's much more relevant 20 to, you know, a different expert's report than to 21 mine. 22 Q. For purposes of this part of your 23 report, you made reference to the expert report of 24 Longo and Rigler that we mentioned earlier.</p> |
| <p>Page 271</p> <p>1 THE WITNESS: That was mine 2 (indicates). 3 (Document marked for 4 identification as Sage Exhibit 14.) 5 BY MR. HEGARTY: 6 Q. If you look over at page 219 of that 7 monograph? 8 A. Uh-huh. 9 Q. It says in the first paragraph 10 towards the bottom: 11 "The conclusions reached in this 12 Monograph about asbestos and its carcinogenic 13 risks apply to these six types of fibres wherever 14 they are found, and that includes talc containing 15 asbestiform fibres." 16 Do you see that? 17 A. Yes. 18 Q. Are you equating or are you saying 19 that what you're saying referring to in this 20 paragraph is talc containing asbestiform fibers? 21 DR. THOMPSON: Object to form. 22 BY MR. HEGARTY: 23 Q. In other words, are what you're 24 calling asbestiform talc, talc containing</p> | <p>Page 273</p> <p>1 Do you see that in paragraph -- in 2 footnote 7? 3 A. Yes. 4 Q. Are you aware that they are paid 5 plaintiffs' experts? 6 MS. PARFITT: Objection. 7 Form. 8 DR. THOMPSON: Objection. 9 Form. 10 THE WITNESS: Yes, I am. 11 BY MR. HEGARTY: 12 Q. Are you aware that they've been paid 13 millions of dollars by the plaintiffs' lawyers in 14 the talc litigation? 15 DR. THOMPSON: Objection. 16 Form. 17 THE WITNESS: I do not know 18 their compensation. 19 BY MR. HEGARTY: 20 Q. Are you aware that they have not 21 published their findings in any peer-reviewed 22 journal? 23 DR. THOMPSON: Objection. 24 Form.</p> |

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| <p>1 THE WITNESS: I was not aware 2 of that.</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. What did you do, if anything, to 5 assess the validity of the findings of Drs. Longo 6 and Rigler?</p> <p>7 DR. THOMPSON: Objection. 8 Form.</p> <p>9 THE WITNESS: With reference 10 to asbestos fibers in talc, the -- the 11 way I approached a lot of the medical and 12 scientific evidence in formulating my 13 opinions involve looking for multiple 14 consistent sources of the same 15 information.</p> <p>16 And certainly with respect to 17 the presence of asbestos in talc, I saw 18 multiple consistent sources, of which the 19 Longo reports were only one.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. Do you have the expertise to 22 evaluate the testing that they did for its 23 reliability?</p> <p>24 DR. THOMPSON: Objection.</p> | <p>Page 274</p> <p>1 report? 2 A. I don't recall, honestly. 3 Q. Would you like to have seen such 4 expert reports if they exist? 5 A. I would be happy to consider them. 6 Q. Did you ask for any defense expert 7 reports commenting on the processes and procedures 8 and reliability of the findings of Drs. Longo and 9 Rigler in their report? 10 A. On those, I don't believe I saw the 11 defense perspective. Though it may have been 12 covered in the Health Canada submission from 13 Johnson & Johnson or in similar documentation. 14 Obviously, there was a lot of back and forth about 15 testing standards and the reliability of results, 16 and to the extent I needed to consider those to 17 formulate my own regulatory opinions, I considered 18 them. 19 Q. In paragraph 30, you refer to a 20 document you call "Hopkins 28." 21 Do you see that? 22 A. Yes. 23 MR. HEGARTY: I'm going to 24 mark as Exhibit No. 15 the Hopkins 28</p> |
| <p>Page 275</p> <p>1 Form.</p> <p>2 THE WITNESS: I have the 3 expertise to read descriptions of testing 4 approaches, and insofar as there's 5 information presented about the 6 advantages or disadvantages compared to 7 other testing approaches, I can reach a 8 general conclusion that would be at a 9 higher level than a layperson.</p> <p>10 BY MR. HEGARTY:</p> <p>11 Q. Did you do anything independently to 12 assess the reliability of the findings reported in 13 the report by Drs. Longo and Rigler you cite here?</p> <p>14 A. Independently, no.</p> <p>15 DR. THOMPSON: Objection.</p> <p>16 Form.</p> <p>17 THE WITNESS: But they were 18 consistent with -- at least specifically 19 with respect to asbestos content, they 20 were consistent with other sources.</p> <p>21 BY MR. HEGARTY:</p> <p>22 Q. Were you provided with any expert 23 reports by Johnson & Johnson's experts as it 24 relates to commentary on Drs. Rigler and Longo's</p> | <p>Page 277</p> <p>1 document. 2 (Document marked for 3 identification as Sage Exhibit 15.)</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. Does that look familiar to you? 6 A. Yes, it does. 7 Q. Do you know who created this 8 document? 9 A. I believe I was told, but I can't 10 recall right now. 11 Q. Do you know that this document was 12 created by plaintiffs' counsel in this case? 13 DR. THOMPSON: Objection.</p> <p>14 Form. Misstates.</p> <p>15 THE WITNESS: I don't know 16 this. I mean, it's a -- it's a synthesis 17 and it is an exhibit. It doesn't have 18 any other markings on it that would tell 19 me where it comes from.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. Who is Hopkins? 22 A. I was told that, and right now at 23 this point in this deposition I'm afraid I can't 24 -- I can't remember.</p> |

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| <p>1 What I -- what I do remember about 2 this is that this was one of the confirmatory 3 sources of information about asbestos risk in -- 4 in baby powder products, and there was a 5 back-and-forth between, I guess, Mr. Hopkins and 6 defense experts as to whether these internal 7 Johnson & Johnson reports were actually asbestos 8 or were not asbestos, using the standards that 9 Johnson & Johnson applied.</p> <p>10 And I was also shown a subsequent 11 document where I imagine it was Mr. Hopkins who 12 went back and responded to the defense's 13 objections to certain characterizations, and I'm 14 afraid that's the best I can do today in 15 remembering this particular document.</p> <p>16 Q. Did you cite that other document 17 that you called a responsive document in your 18 report?</p> <p>19 A. No. I believe I was shown that 20 responsive document subsequently to final --</p> <p>21 Q. Shown by -- I'm sorry.</p> <p>22 A. -- to finalizing the report.</p> <p>23 Q. Shown by whom?</p> <p>24 A. Shown -- shown my plaintiffs'</p> | <p>1 independently confirm. This compilation 2 was something that I looked at and 3 thought about and discussed and saw the 4 defendants' position on.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. You took this document at face 7 value, correct?</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: I took this 10 document as being an accurate list of 11 dates and internal testing and results.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. If this document is inaccurate, you 14 agree that that can affect your opinions in this 15 case, correct?</p> <p>16 DR. THOMPSON: Objection.</p> <p>17 THE WITNESS: No, I don't 18 think my -- my opinions, again, 19 considering the totality of the opinions 20 and the other sources of evidence of 21 asbestos adulteration in baby powder 22 products, I don't think my opinions stand 23 on or fall on this or any other single 24 document.</p> |
| <p>1 counsel in a discussion about asbestos content.</p> <p>2 Q. This document makes reference to 3 other exhibits.</p> <p>4 Did you review the documents that 5 this exhibit references, the actual documents 6 themselves?</p> <p>7 A. No.</p> <p>8 It was evident that such documents 9 would exist because this was a compilation of 10 documents.</p> <p>11 Q. Do you see on the very first line of 12 Exhibit or -- I'm sorry -- the line in Exhibit 13 No. 28 that's dated a 5/9/1958?</p> <p>14 Do you see that line?</p> <p>15 A. (Laugh). Unless we want to declare 16 a brief recess for me to get a magnifying glass 17 from my briefcase, I'm having trouble reading this 18 particular document.</p> <p>19 Q. Needless to say, though, you did not 20 independently confirm whether any of the documents 21 that are referenced here actually show asbestos in 22 Johnson's Baby Powder, correct?</p> <p>23 DR. THOMPSON: Object to form.</p> <p>24 THE WITNESS: I did not</p> | <p>1 BY MR. HEGARTY:</p> <p>2 Q. Again, you make reference in this 3 paragraph to what we talked about earlier, the 4 report of Drs. Longo and Rigler.</p> <p>5 Did you do any analysis yourself as 6 far as where they obtained the product that they 7 tested and whose results they reported in this -- 8 in this report?</p> <p>9 A. No.</p> <p>10 Q. You also make reference in this 11 paragraph, as you mentioned earlier, to FDA's 2019 12 testing.</p> <p>13 Do you see that?</p> <p>14 A. I'm sorry. I was taking a drink of 15 water. Hold on.</p> <p>16 Q. That's all right.</p> <p>17 A. Yes, of course.</p> <p>18 Q. And did you actually review the 19 testing document from the lab that FDA relied upon 20 to report that finding?</p> <p>21 A. I believe that document was 22 available. I most remember reviewing FDA's press 23 releases and other public statements at the time 24 of their testing and -- and their findings and</p> |

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| <p>1 what became, thankfully, voluntary recalls of the 2 products involved.</p> <p>3 Q. Do you recall what type of asbestos 4 FDA claimed to have found pursuant to its testing 5 results --</p> <p>6 A. No.</p> <p>7 Q. -- testing procedures?</p> <p>8 A. No, I don't at the moment.</p> <p>9 MR. HEGARTY: I'm going to 10 mark as Exhibit No. 16 a statement by 11 Johnson & Johnson of December 3, 2019. 12 (Document marked for 13 identification as Sage Exhibit 16.)</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. Is this the first time you've ever 16 seen this?</p> <p>17 A. I was aware that Johnson & Johnson 18 had done its own testing of a number of samples 19 and had found no asbestos using its standards. I 20 do think this is the first time I've seen this 21 press release.</p> <p>22 Q. Do you see in this document 23 number -- Exhibit No. 16 the third paragraph says 24 that:</p> | <p>1 this being reported, correct?</p> <p>2 A. I am aware of -- of some of this 3 being reported, yes.</p> <p>4 Q. Do you agree that the testing that 5 was done calls -- by Johnson & Johnson calls into 6 question the accuracy of the FDA testing results?</p> <p>7 DR. THOMPSON: Objection.</p> <p>8 Form.</p> <p>9 THE WITNESS: I don't have a 10 basis to agree with that.</p> <p>11 If the FDA had retracted its 12 findings, then I would have a basis; but, 13 again, the core of my analysis is a 14 regulatory analysis, and I'm not offering 15 an expert opinion as to causation or as 16 to any particular set of -- of product 17 tests.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. You did not make any reference to 20 any follow-up testing done by Johnson & Johnson in 21 your report, correct?</p> <p>22 A. I don't believe so.</p> <p>23 Q. You also did not make reference to 24 testing done by FDA in 2009 and 2010 of Johnson's</p> |
| <p>1 "The Company's investigation 2 included that the most probable root causes for 3 the FDA's reported results were either test sample 4 contamination and/or analyst error at the AMA 5 lab."</p> <p>6 Do you see where I'm reading from?</p> <p>7 A. I just -- just one moment. I'm 8 seeing -- I'm seeing a similar statement in the 9 "Over the course of the investigation" paragraph. 10 Is that where you're reading from?</p> <p>11 Q. I was reading from the third 12 paragraph.</p> <p>13 A. Oh.</p> <p>14 Q. The first page.</p> <p>15 A. Oh, I'm sorry, yes. Yes.</p> <p>16 Q. Okay. And then do you see a couple 17 paragraphs down where the statement notes that 155 18 tests conducted by two different third-party labs 19 confirmed that there is no asbestos in that 20 product?</p> <p>21 Do you see that?</p> <p>22 A. I see that assertion.</p> <p>23 Q. And you said prior to seeing this 24 statement that you were aware at least of some of</p> | <p>1 Baby Powder finding no asbestos, did you?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: My recollection 4 of that -- and, you know, bear with me 5 complicated topic -- is that those were 6 tests of a rather small number of 7 samples; and, no, I did not make 8 reference to those.</p> <p>9 BY MR. HEGARTY:</p> <p>10 Q. Well, you made reference to the 2019 11 testing by FDA.</p> <p>12 Why did you not make reference to 13 the 2009 testing by FDA?</p> <p>14 DR. THOMPSON: Object to form.</p> <p>15 THE WITNESS: Because the 16 2019 testing resulted in regulatory 17 action and rose to the level that was 18 something widely reported and in my 19 opinion reliable.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. Well, you mentioned a moment ago 22 that you recall that the 2009 test results were of 23 a small number of samples.</p> <p>24 Do you understand that the 2019 test</p> |

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| <p>1 result was from a single bottle of Johnson's Baby 2 Powder?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: I understand 5 that the positive result was a single 6 bottle, but recall that if you're trying 7 to prove a negative and you test -- I'm 8 making up a number -- five bottles of 9 baby powder and don't find asbestos, 10 that's not going to be evidence that no 11 bottle has asbestos.</p> <p>12 I suspect with regard to the 13 2019 testing that if we multiplied one 14 asbestos-laden bottle out to the full 15 number of bottles of baby powder that 16 Johnson & Johnson sold that year, I doubt 17 that your client would -- would decide 18 that, you know, we'd have to see how many 19 bottles -- was it 50 some that Johnson & 20 Johnson -- that FDA tested?</p> <p>21 But, I mean, if we -- if we 22 divide your total production by 50 and 23 multiply that number by 1 and said 24 that's -- that's how many asbestos-laden</p> | <p>Page 286</p> <p>1 I'm not expressing an expert opinion 2 as -- as to who wins that particular argument; but 3 if there is asbestos in baby powder in one bottle, 4 it is unlikely that there is no asbestos in any 5 other bottle in an entire global production.</p> <p>6 Q. That's not my question.</p> <p>7 My question is: If -- under your 8 standard if every test that has been done on 9 Johnson's Baby Powder showed no asbestos, you 10 would still not believe that that was sufficient 11 to prove that Johnson's Baby Powder doesn't have 12 asbestos in it, correct?</p> <p>13 MS. PARFITT: Objection.</p> <p>14 DR. THOMPSON: Object to form.</p> <p>15 THE WITNESS: My belief in 16 some sense is irrelevant here.</p> <p>17 I have documentary evidence of 18 asbestos in baby powder and that is 19 highly relevant to my regulatory 20 conclusions.</p> <p>21 I have seen many documents 22 that cast doubt on the sufficiency of a 23 long-time testing standard for asbestos 24 in terms of actually determining whether</p> |
| <p>Page 287</p> <p>1 bottles of baby powder in the market, I 2 don't think your client would be 3 comfortable with that. You know, this is 4 not scientifically comparable, a negative 5 finding in three bottles.</p> <p>6 If we want to do positive 7 predictive value and negative predictive 8 value calculations, these two are not 9 comparable pieces of logic.</p> <p>10 BY MR. HEGARTY:</p> <p>11 Q. Well, according to your analysis, a 12 negative finding in every bottle tested would 13 still not be enough under your standard to prove 14 that talcum powder products don't contain 15 asbestos, correct?</p> <p>16 A. That --</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: That's 19 incorrect.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. How is that incorrect?</p> <p>22 A. The FDA used its laboratories and 23 its laboratory standards. Johnson & Johnson used 24 others and disagreed with the FDA's finding.</p> | <p>Page 289</p> <p>1 there is asbestos or, for that matter, 2 asbestiform fibers in baby powder 3 products or has been over the years, 4 which has understandably produced in me 5 some skepticism around negative findings.</p> <p>6 May not be applicable to these 7 particular assays because I can't weight 8 the details on short notice, but I think 9 I am no more demanding of Johnson & 10 Johnson than the law and the regulations 11 expect me to be.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. You do not have the expertise to 14 comment on how much asbestos exposure can cause 15 ovarian cancer, correct?</p> <p>16 DR. THOMPSON: Object.</p> <p>17 THE WITNESS: I do not, but 18 there is a consensus among experts and 19 regulatory authorities that the presence 20 of asbestos in consumer products is an 21 adulterant and is hazardous to health.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. If you look at paragraph 31, you 24 comment on fragrances.</p> |

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| <p>1 And before being hired by 2 plaintiffs, have you ever commented on fragrances 3 in a consumer product?</p> <p>4 A. I have never commented on 5 fragrances.</p> <p>6 Q. Your entire -- your sole reference 7 in this paragraph is to an expert report of 8 Dr. Crowley.</p> <p>9 Did you read that report in its 10 entirety?</p> <p>11 A. In its entirety, no. I did look at 12 it, and the purpose of this is that consistent 13 with current FDA requirements, fragrance-related 14 disclosures for cosmetics are limited as a 15 fragrance being something that is often of great 16 proprietary value to the company making the 17 product.</p> <p>18 I have -- I would have preference 19 for greater disclosure of fragrance-related 20 ingredients, but the purpose of including 21 paragraph 31 is that there are many ingredients in 22 talcum powder products beyond what's listed on the 23 label.</p> <p>24 Q. You did not do your own independent</p> | <p>Page 290</p> <p>1 BY MR. HEGARTY:</p> <p>2 Q. Does that exhibit look familiar to 3 you?</p> <p>4 A. In passing, yes. I don't think I 5 spent much time looking at this.</p> <p>6 Q. Did you look at the individual 7 documents from which this document was prepared?</p> <p>8 A. No. I just looked at the list of, 9 you know, as presented here in the substances that 10 were -- that were present in -- in these samples 11 as a confirmation that indeed there are materials 12 here that in some instances, in some doses, in 13 some exposures are known to have health hazards.</p> <p>14 But I'm not making -- the same way 15 I'm not offering an opinion as a scientific 16 expert as to whether, you know, talcum powder 17 exposure causes ovarian cancer, I'm not offering a 18 scientific opinion on the causal connection 19 between any one of these particular ingredients 20 and any particular health injury.</p> <p>21 Q. Do you know who prepared this 22 document?</p> <p>23 A. I would assume this is also a -- 24 well, actually, no, I don't know. I would</p> |
| <p>Page 291</p> <p>1 assessment of any risk associated with any of the 2 fragrances in Johnson's Baby Powder, correct?</p> <p>3 A. Correct.</p> <p>4 Q. If you look over at paragraph 32 of 5 your report, you cite in that paragraph to a Pier 6 Exhibit 47.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Who is Pier?</p> <p>10 A. I cannot recall.</p> <p>11 Q. What's her name? Do you know what 12 her name is? First name?</p> <p>13 A. No.</p> <p>14 Q. Is she employed by Johnson & 15 Johnson?</p> <p>16 A. I would have to go back and -- and 17 look at the exhibits.</p> <p>18 Q. Did you read her deposition?</p> <p>19 A. I can't recall.</p> <p>20 MR. HEGARTY: I'm going to 21 mark as Exhibit 17 the Pier exhibit that 22 you cite in this paragraph.</p> <p>23 (Document marked for 24 identification as Sage Exhibit 17.)</p> | <p>Page 291</p> <p>1 assume -- I would assume this is also a 2 plaintiffs' exhibit or a plaintiffs' document, but 3 I don't know.</p> <p>4 Q. And plaintiffs' lawyers provided you 5 with this Exhibit Pier 47 and Hopkins 28, correct?</p> <p>6 A. Yes, and this was, you know, in 7 response to my request about having metal content 8 and other -- other potential contaminants or 9 adulterants of -- of baby powder products.</p> <p>10 Q. Did you independently investigate 11 any or independently assess the literature as it 12 relates to heavy metals and the risk of ovarian 13 cancer?</p> <p>14 A. I did not. I considered these risks 15 worth mentioning in light of the regulatory 16 obligations, but less certain in their hazardous 17 consequences than asbestos, which is why I would 18 sort of go back to the bold heading above all of 19 these paragraphs which says "Contain or may 20 contain ingredients that pose health hazards to 21 consumers."</p> <p>22 Q. You did no independent assessment as 23 far as whether there are heavy metals in Johnson's 24 Baby Powder, correct?</p> |

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| <p>1 A. Correct.</p> <p>2 Q. You did no assessment, to the extent</p> <p>3 there are any such materials in Johnson's Baby</p> <p>4 Powder, as far as the extent of any such</p> <p>5 materials, correct?</p> <p>6 A. In terms of concentrations and</p> <p>7 overall prevalence and likelihood of exposure, no.</p> <p>8 Q. You did not read any medical</p> <p>9 literature as it relates to exposure to these</p> <p>10 heavy metals and cancer risk, correct?</p> <p>11 DR. THOMPSON: Object to form.</p> <p>12 THE WITNESS: I can't -- I</p> <p>13 can't recall. It wouldn't have been --</p> <p>14 it wasn't the focus of any of the</p> <p>15 scientific literature that I reviewed.</p> <p>16 It might well have been mentioned in</p> <p>17 passing.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. You reference -- or strike that.</p> <p>20 There are monographs that refer to</p> <p>21 these heavy metals.</p> <p>22 Did you review the monographs for</p> <p>23 these heavy metals by IARC?</p> <p>24 A. Did I review an IARC heavy metal</p> | <p>Page 294</p> <p>1 Q. Does EPA allow levels of asbestos in</p> <p>2 drinking water?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: I do not know.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. If we look next at --</p> <p>7 A. I would say that, you know,</p> <p>8 ingestion of asbestos has never been a root of</p> <p>9 exposure that I have seen to be frequently</p> <p>10 associated with a health hazard. It doesn't mean</p> <p>11 it couldn't be. Very similar in some ways to</p> <p>12 radon exposure.</p> <p>13 Q. If you look next at paragraph 42.</p> <p>14 A. Yes.</p> <p>15 Q. What is your authority for the</p> <p>16 definition of risk that you have in that</p> <p>17 paragraph?</p> <p>18 A. This is -- this is from my</p> <p>19 longstanding expertise in risk regulation and risk</p> <p>20 assessment, and this -- this is a, I would say,</p> <p>21 majority view makes a distinction between risk and</p> <p>22 uncertainty. It is, again, a distinction that is</p> <p>23 made for purposes of analysis and purposes of</p> <p>24 regulatory action.</p> |
| <p>Page 295</p> <p>1 monograph? Not in any detail and perhaps not at</p> <p>2 all. I can't recall.</p> <p>3 Q. If you look over next at paragraph</p> <p>4 39, you say that:</p> <p>5 "Current literature suggests that</p> <p>6 there is no safe level of asbestos."</p> <p>7 Do you see where I'm reading?</p> <p>8 A. Yes.</p> <p>9 Q. Do you understand that there are</p> <p>10 background levels of asbestos in urban and other</p> <p>11 areas of the United States?</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 THE WITNESS: I did not know</p> <p>14 that. It would not surprise me.</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. In your -- I'm sorry. Go ahead.</p> <p>17 A. I'm done.</p> <p>18 Q. In your opinion, do background</p> <p>19 levels of asbestos in the air cause ovarian</p> <p>20 cancer?</p> <p>21 DR. THOMPSON: Object to form.</p> <p>22 THE WITNESS: I have no basis</p> <p>23 for giving an opinion on that.</p> <p>24 BY MR. HEGARTY:</p> | <p>Page 297</p> <p>1 It is -- it's not a matter of</p> <p>2 scientific fact. Most of this comes out of the</p> <p>3 economics literature. Some economists use the</p> <p>4 umbrella term "risk" to describe both known</p> <p>5 probabilities and unknown aspects of those</p> <p>6 probabilities.</p> <p>7 I would say more economists do what</p> <p>8 I have done here and make a distinction for</p> <p>9 discussion purposes between risk and uncertainty,</p> <p>10 and I think that that distinction is essential to</p> <p>11 these opinions because there's a specific</p> <p>12 regulatory requirement, as you know, that</p> <p>13 uncertainty be disclosed in connection with</p> <p>14 cosmetic safety.</p> <p>15 Q. If we look at paragraph 45, you say:</p> <p>16 "Both the risk and the uncertainty</p> <p>17 must be disclosed under law."</p> <p>18 First, to what law are you</p> <p>19 referring?</p> <p>20 A. So -- so with respect to cosmetics,</p> <p>21 you have these statutory pillars of adulteration</p> <p>22 and misbranding because you don't have that much</p> <p>23 more.</p> <p>24 And then in terms of FDA regulation</p> |

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| <p>1 that's in the CFR, you have both 740.1 part A in 2 terms of warning labels. "Labels shall bear a 3 warning statement wherever necessary or 4 appropriate to prevent the health hazard that may 5 be associated with the product." You know, "may 6 be associated" clearly encompasses risks.</p> <p>7 And then you have this really belt 8 and suspenders and, I think, extremely important 9 provision of 740.10(a), which -- which emphasizes 10 the manufacturer's independent obligation to 11 adequately substantiate safety of -- of cosmetic 12 products and ingredients prior to marketing.</p> <p>13 And then says that anything that has 14 not been adequately substantiated -- meaning we 15 don't know what the -- the risks, or lack of 16 risks, are or the warnings or instructions that 17 might accompany them -- has to bear this 18 additional specified statement that the safety of 19 this product has not been determined.</p> <p>20 Q. Have you ever in any written 21 document of yours prior to your expert report made 22 the statement that with regard to the cosmetic 23 statutes and regulations both the risk and 24 uncertainty must be disclosed?</p> | <p>1 A. If you just give me a moment. 2 Yes. 3 Q. Can you cite for me any Johnson & 4 Johnson employee who has ever expressed the view 5 that there is risk and uncertainty regarding talc 6 and ovarian cancer?</p> <p>7 DR. THOMPSON: Object to form. 8 THE WITNESS: I believe I 9 have seen some documentation regarding to 10 use a nonscientific term "queasiness" on 11 the part of Johnson & Johnson employees 12 regarding the possibility that baby 13 powder is not safe applied perineally in 14 terms of ovarian cancer risk. 15 Is that a description of risk 16 and uncertainty? I think so, but you 17 might not.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. Do you cite that document in this 20 report?</p> <p>21 A. No. In terms of corporate -- I make 22 no claims about corporate motive. And when I use 23 corporate knowledge, I'm really talking about 24 notice, and there has been, you know, 50 years of</p> |
| <p>1 DR. THOMPSON: Object to form. 2 THE WITNESS: No.</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. Can you cite for me a statement by 5 anyone in any publication prior to you writing 6 your expert report where they said that with 7 regard to the cosmetic statutes and regulations 8 both the risk and uncertainty must be disclosed?</p> <p>9 DR. THOMPSON: Object to form. 10 THE WITNESS: Using those 11 terms? 12 BY MR. HEGARTY:</p> <p>13 Q. Correct. 14 A. No, but those concepts, absolutely. 15 The notion of a health hazard is a probabilistic 16 determination and that is a risk, and the 740.10 17 obligation, which has been referenced in many 18 settings over the years since the 1970s when it 19 was put into regulation, is uncertainty.</p> <p>20 Q. You make the statement over on page 21 7 that "Johnson & Johnson has known about risk and 22 uncertainty regarding talc and ovarian cancer for 23 decades."</p> <p>24 Do you see where I'm reading?</p> | <p>1 Page 299</p> <p>1 scientific literature raising concerns about 2 various aspects of talc and its potential or 3 actual adulterants and cancer risk.</p> <p>4 Q. You've never spoken to anyone at 5 Johnson & Johnson regarding talcum powder 6 products, correct?</p> <p>7 A. Correct.</p> <p>8 Q. If we look over at paragraph 47, you 9 state in the first line: 10 "Johnson & Johnson's resistance to 11 the presence in talcum powder products of fibrous 12 constituents that pose risk to human health is 13 strikingly at odds with the factual history." 14 You say "Johnson & Johnson's 15 resistance." To whom at Johnson & Johnson are you 16 referring to?</p> <p>17 A. I'm referring to the persistent 18 unwillingness in the context that I have examined, 19 including this litigation, of Johnson & Johnson to 20 make any concession whatsoever regarding the lack 21 of evidence of safety for its legacy product.</p> <p>22 Q. Are you able to -- strike that. 23 Are you commenting on any individual 24 person's view or opinion at Johnson & Johnson in</p> |

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| <p>1 your report?</p> <p>2 A. If we were to look at Facts About</p> <p>3 Talc, either the depository of documents or the</p> <p>4 consumer-facing reassurances, it makes no</p> <p>5 concession even to uncertainty, which I actually</p> <p>6 find disappointing, frankly shocking, and directly</p> <p>7 at odds with its regulatory obligations.</p> <p>8 Q. That didn't answer my question.</p> <p>9 Do you rely on any individual</p> <p>10 person's statements at Johnson & Johnson for any</p> <p>11 of the statements in your report?</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 THE WITNESS: I would -- do I</p> <p>14 -- again, I have considered statements of</p> <p>15 many employees. Do I cite any particular</p> <p>16 individual or today do I recall the</p> <p>17 individual as being particularly</p> <p>18 important to my conclusions? No.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. In paragraph 48, you state:</p> <p>21 "Johnson & Johnson Laboratories</p> <p>22 recognized the inflammatory effects of talcum</p> <p>23 powder in the peritoneal cavity."</p> <p>24 And you cite as support an article</p> | <p>1 that might be resulting from powder on</p> <p>2 gloves. One could have granulomatosis</p> <p>3 and other types of inflammation.</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. But you're also aware that the FDA</p> <p>6 action was not based on any concern about cancer</p> <p>7 risk from particles on surgical gloves, correct?</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: I would be</p> <p>10 interested in reviewing the details of</p> <p>11 that determination. I don't know for a</p> <p>12 fact that cancer was not a consideration,</p> <p>13 but it certainly wasn't the most pressing</p> <p>14 consideration for surgical gloves.</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. Does corn starch present a risk of</p> <p>17 cancer?</p> <p>18 A. To my knowledge, no.</p> <p>19 I believe the difference is that</p> <p>20 corn starch can cause acute but not chronic</p> <p>21 inflammation, and typically it's a chronic</p> <p>22 inflammatory process that's considered a</p> <p>23 contributor to carcinogenesis.</p> <p>24 Q. If you look over at paragraph 52 of</p> |
| <p>1 by Eberl.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Did you find this article yourself</p> <p>5 through any search you did?</p> <p>6 A. No.</p> <p>7 Q. You know that that article makes no</p> <p>8 reference to cancer risk, correct?</p> <p>9 A. I do know. It has to do with talcum</p> <p>10 powder on gloves and surgical inflammation.</p> <p>11 Q. Are you aware that FDA has banned</p> <p>12 any type of powder, including corn starch, on</p> <p>13 gloves?</p> <p>14 A. I am aware that those -- that powder</p> <p>15 is not used on gloves. Again, surgical gloves are</p> <p>16 not cosmetics and, yes, I do believe that was an</p> <p>17 FDA decision.</p> <p>18 Q. And you know that Eberl and the FDA</p> <p>19 decision was based on the potential for powder on</p> <p>20 gloves to cause adhesions or fibrosis</p> <p>21 post-surgery, right?</p> <p>22 DR. THOMPSON: Object to form.</p> <p>23 THE WITNESS: I believe</p> <p>24 adhesions are one of several conditions</p> | <p>1 your report, you make reference there to the "J4-1</p> <p>2 method of asbestos detection."</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. What is the J4-1 method?</p> <p>6 A. The J4-1 method, based on the</p> <p>7 documents I've reviewed, was an industry-based</p> <p>8 standard that was developed in part to forestall a</p> <p>9 more direct governmental or quasi-governmental</p> <p>10 standard setting process for asbestos testing.</p> <p>11 And it has been apparently controversial in this</p> <p>12 litigation and other contexts of determining</p> <p>13 whether something that is undetectable asbestos is</p> <p>14 actually no asbestos.</p> <p>15 Q. What testing methods should be used</p> <p>16 under the J4-1 method?</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: I remember this</p> <p>19 was light microscopy and some other</p> <p>20 things. I don't remember the details</p> <p>21 right now. I've read the specifications,</p> <p>22 but I can't recall.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. What's the level of detection</p> |

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| <p>1 under -- of asbestos under the J4-1 method?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: That was hard</p> <p>4 to assess from what I read because I read</p> <p>5 some internal perhaps corporate documents</p> <p>6 that -- that talked about sort of one</p> <p>7 percent thresholds and half percent</p> <p>8 thresholds.</p> <p>9</p> <p>10 And it was never actually</p> <p>11 clear to me exactly what was being --</p> <p>12 what was being measured in those; but</p> <p>13 there was, it seemed, some debate about</p> <p>14 whether those sensitivities were actually</p> <p>15 sufficient to declare some -- a talc --</p> <p>16 talcum powder product asbestos-free with</p> <p>17 industry asserting that they were</p> <p>18 sufficient and others asserting they were</p> <p>19 not.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. How does the J4-1 method compare to</p> <p>22 the method Johnson & Johnson employs to test its</p> <p>23 talcum powder products?</p> <p>24 DR. THOMPSON: Object to form.</p> | <p>1 BY MR. HEGARTY:</p> <p>2 Q. As far as what documents you did</p> <p>3 review, those were documents provided to you by</p> <p>4 plaintiffs' counsel, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Did you make any specific requests</p> <p>7 for particular documents about the development of</p> <p>8 the J4-1 method to plaintiffs' counsel?</p> <p>9 A. No.</p> <p>10 Q. Paragraph 54 refers to or you make</p> <p>11 -- you make the statement in paragraph 54 that:</p> <p>12 "Condom manufacturers voluntarily</p> <p>13 removed talc from their products because of</p> <p>14 ovarian cancer concerns."</p> <p>15 And you cite in that at the end of</p> <p>16 that paragraph footnote 19, which is a document</p> <p>17 PCPC MDL00062175.</p> <p>18 Do you see that?</p> <p>19 A. I see that.</p> <p>20 MR. HEGARTY: I'm going to</p> <p>21 mark as Exhibit 18 that very document you</p> <p>22 cited there.</p> <p>23 (Document marked for</p> <p>24 identification as Sage Exhibit 18.)</p> |
| <p>1 THE WITNESS: I do not -- I</p> <p>2 do not know.</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. Is it your belief that Johnson &</p> <p>5 Johnson uses only the J4-1 method to test its baby</p> <p>6 powder?</p> <p>7 MS. PARFITT: Objection.</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: I would assume</p> <p>10 that Johnson & Johnson has advanced its</p> <p>11 detection methods beyond the J4-1 method</p> <p>12 today.</p> <p>13 BY MR. HEGARTY:</p> <p>14 Q. Have you investigated that issue?</p> <p>15 A. Have I investigated that? No.</p> <p>16 Again, the discussion of the J4-1 method related</p> <p>17 for purposes of my opinion mostly to the</p> <p>18 regulatory climate.</p> <p>19 Q. Do you believe you reviewed all the</p> <p>20 documents that have been produced by all the</p> <p>21 companies in this litigation as it relates to the</p> <p>22 development of the J4-1 method?</p> <p>23 A. No.</p> <p>24 DR. THOMPSON: Object to form.</p> | <p>1 BY MR. HEGARTY:</p> <p>2 Q. Can you show me in that document to</p> <p>3 what you're referring to as support for the</p> <p>4 statement you make in paragraph 54?</p> <p>5 A. (Reviews document.)</p> <p>6 This is, as you know, a compilation</p> <p>7 of papers. So it's -- unlike a single paper, it's</p> <p>8 very hard for me to review it quickly.</p> <p>9 Q. Okay.</p> <p>10 A. So I would have to look through this</p> <p>11 extensively for -- for that information.</p> <p>12 Q. Well, if you look over at page 15</p> <p>13 and 16 and 17, there are references there to the</p> <p>14 year of 1995, and you make reference to the year</p> <p>15 1995 in paragraph 54.</p> <p>16 So which of those documents there</p> <p>17 that include a date of 1995 did you rely upon to</p> <p>18 make the statement in paragraph 54?</p> <p>19 A. I can't identify one now. I can --</p> <p>20 I can say that I discussed this particular</p> <p>21 statement and particular issues of the motivations</p> <p>22 and concerns with respect to talcum powder on</p> <p>23 condoms with plaintiffs' counsel to -- to verify</p> <p>24 that I had the correct information, but I can't</p> |

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| <p>1 say -- I can't find the cite for you right now.</p> <p>2 Q. Is your authority for that statement</p> <p>3 plaintiffs' counsel?</p> <p>4 MS. PARFITT: Objection.</p> <p>5 Form.</p> <p>6 DR. THOMPSON: Objection.</p> <p>7 Form.</p> <p>8 THE WITNESS: It did not</p> <p>9 occur to me that this was a controversial</p> <p>10 statement. I did my best to verify</p> <p>11 through plaintiffs' counsel that it was</p> <p>12 accurate because I want to make sure that</p> <p>13 anything that I am putting in the report</p> <p>14 is accurate. But --</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. Would you agree --</p> <p>17 A. -- in retrospect, I would certainly</p> <p>18 prefer to be citing a direct voluntary</p> <p>19 reformulation document or a scientific study</p> <p>20 rather than this particular footnoted timeline.</p> <p>21 Q. If we look over at paragraph 70.</p> <p>22 A. Are we back in my report?</p> <p>23 Q. Back in your report, paragraph 70.</p> <p>24 A. Sure.</p> | <p>1 obligations.</p> <p>2 It is my opinion that this website,</p> <p>3 which is very much consumer-facing and consumer</p> <p>4 reassuring, is part of the labeling, if not the</p> <p>5 label, of talc containing baby powder. Much of</p> <p>6 this being mooted by the fact that talc containing</p> <p>7 baby powder is no longer manufactured or sold in</p> <p>8 the United States and Canada, but, of course,</p> <p>9 people outside there could access this website.</p> <p>10 Q. My question is a little bit</p> <p>11 different.</p> <p>12 And my question is: Do you intend</p> <p>13 to testify in this lawsuit about the veracity,</p> <p>14 which you know the definition of veracity, of</p> <p>15 Johnson & Johnson?</p> <p>16 A. I don't know the definition of</p> <p>17 veracity for the purpose of this question.</p> <p>18 Q. Well, you know the definition of</p> <p>19 veracity is the truthfulness, correct? You're a</p> <p>20 lawyer?</p> <p>21 A. Yes. Yes, if we were to say</p> <p>22 (laugh). I am a lawyer.</p> <p>23 Q. Right. You are a lawyer. Let me</p> <p>24 back -- let me start my question again.</p> |
| <p>1 Q. You make several claims of Johnson &</p> <p>2 Johnson being untruthful.</p> <p>3 Are you saying that Johnson &</p> <p>4 Johnson is lying on the talc -- the safety -- the</p> <p>5 Facts About Talc website?</p> <p>6 A. I was not comfortable with the</p> <p>7 representations to consumers that Johnson &</p> <p>8 Johnson made on that website with respect to</p> <p>9 safety and purity, particularly the content and</p> <p>10 tone that suggests that these questions about</p> <p>11 potential health hazards have been definitively</p> <p>12 resolved.</p> <p>13 And my objections in the report are</p> <p>14 most relevant to my conclusion that Johnson &</p> <p>15 Johnson has not complied with its disclosure</p> <p>16 obligations regarding safety not being</p> <p>17 substantiated.</p> <p>18 Q. Well, do you intend to testify in</p> <p>19 this litigation about the veracity of Johnson &</p> <p>20 Johnson as it relates to this website?</p> <p>21 A. I would testify about the content of</p> <p>22 this website and the ways in which this content is</p> <p>23 at odds with Johnson & Johnson's self-regulatory</p> <p>24 obligations and their specific regulatory</p> | <p>1 You know as a lawyer what the word</p> <p>2 "veracity" means?</p> <p>3 A. If are we using veracity as a</p> <p>4 synonym for accuracy? It appears to me that your</p> <p>5 question allies distinctions between Johnson &</p> <p>6 Johnson's motivation and character and the</p> <p>7 accuracy of information presented.</p> <p>8 I am -- it would be part of my</p> <p>9 testimony that the information presented is at</p> <p>10 odds with the required consumer-facing labeling of</p> <p>11 these products to be compliant with FDA</p> <p>12 regulations.</p> <p>13 Q. Do you intend to testify about the</p> <p>14 intent of Johnson & Johnson in regards to any</p> <p>15 document and, in particular, the Facts About Talc</p> <p>16 website?</p> <p>17 A. No.</p> <p>18 Q. Do you intend to talk about the</p> <p>19 motives of anyone at Johnson & Johnson as it</p> <p>20 relates to talcum powder products?</p> <p>21 A. No.</p> <p>22 Q. Do you intend to testify that</p> <p>23 Johnson & Johnson in setting up the Facts About</p> <p>24 Talc website did so to lie to the public about the</p> |

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| <p>1 safety of talc?</p> <p>2 A. I am a student of institutions both</p> <p>3 governmental and corporate in these regulatory</p> <p>4 contexts. I am extremely interested in how a</p> <p>5 company as large and as experienced and as</p> <p>6 accomplished as Johnson & Johnson has been in many</p> <p>7 domains could, in my opinion, fall so far short of</p> <p>8 its obligations in this respect.</p> <p>9 So would I offer a conclusion about</p> <p>10 corporate motivation? No.</p> <p>11 Were I to be questioned on it, might</p> <p>12 I offer thoughts about how this type of thing</p> <p>13 might happen? I'm really shocked that this could</p> <p>14 happen and that at this juncture between what is</p> <p>15 presented to consumers as a pure and proved safe</p> <p>16 product and the science and the regulatory</p> <p>17 obligation is very disturbing to me, and indeed</p> <p>18 that's part of my report and would be part of my</p> <p>19 testimony.</p> <p>20 Q. You state that the website omits any</p> <p>21 suggestion of uncertainty with respect to the</p> <p>22 overall safety or carcinogenic risk of talcum</p> <p>23 powder products.</p> <p>24 Do you see where I'm reading?</p> | <p>Page 314</p> <p>1 contention that the Facts About Talc website</p> <p>2 failed to provide a balanced discussion of the</p> <p>3 medical and scientific literature on the subject</p> <p>4 of talcum powder use and ovarian cancer?</p> <p>5 DR. THOMPSON: Object to form.</p> <p>6 THE WITNESS: It's my opinion</p> <p>7 that the Facts About Talc website,</p> <p>8 insofar as it is accessible to and easily</p> <p>9 findable by someone who's using Johnson's</p> <p>10 Baby Powder and wondering whether there</p> <p>11 is risk or uncertainty, it is my position</p> <p>12 that in that connection, the website</p> <p>13 provides information that is at odds with</p> <p>14 Johnson & Johnson's regulatory</p> <p>15 obligations.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. Do you have any opinion as to -- is</p> <p>18 it your opinion that the Facts About Talc website</p> <p>19 is not valid, fair and balanced?</p> <p>20 DR. THOMPSON: Objection.</p> <p>21 THE WITNESS: We're not</p> <p>22 discussing Fox News. I do not see what</p> <p>23 -- "fair and balanced" is not a phrase</p> <p>24 that I think relates to --</p> |
| <p>Page 315</p> <p>1 A. Yes. That was my read of the</p> <p>2 website as I encountered it personally.</p> <p>3 Q. So your position is that a proper</p> <p>4 analysis of the issues of talc and ovarian cancer</p> <p>5 must include a discussion of all authorities on</p> <p>6 the issue, correct?</p> <p>7 MS. PARFITT: Objection.</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: Would you</p> <p>10 repeat that?</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. Sure.</p> <p>13 So it's your position that a proper</p> <p>14 analysis of the issues of talc and ovarian cancer,</p> <p>15 including as it relates to the Facts About Talc</p> <p>16 website, should include a discussion of all the</p> <p>17 authorities on the issue, correct?</p> <p>18 DR. THOMPSON: Object to form.</p> <p>19 THE WITNESS: I am failing to</p> <p>20 see the connection between this question</p> <p>21 and prior questions. So I think I don't</p> <p>22 know how to answer it.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. Well, is it your statement --</p> | <p>Page 317</p> <p>1 BY MR. HEGARTY:</p> <p>2 Q. Okay. Let me use a different</p> <p>3 phrase.</p> <p>4 That's not -- by the way, Fox News</p> <p>5 doesn't own the term "fair and balanced," right?</p> <p>6 A. They think they do, but we can leave</p> <p>7 that aside. (Laugh).</p> <p>8 Q. Well, is it your contention that the</p> <p>9 Facts About Talc website is misleading because it</p> <p>10 doesn't include contrary scientific and medical</p> <p>11 literature as it relates to the safety of talcum</p> <p>12 powder products?</p> <p>13 DR. THOMPSON: Object to form.</p> <p>14 THE WITNESS: I'm doing my</p> <p>15 best to answer the questions you're</p> <p>16 asking.</p> <p>17 My -- my position is that,</p> <p>18 first of all, the Facts About Talc</p> <p>19 website omits any disclosure of</p> <p>20 uncertainty, which is a specific</p> <p>21 regulatory obligation, and, frankly, is</p> <p>22 so conclusory that it might even negate</p> <p>23 some other statement about an uncertainty</p> <p>24 that Johnson & Johnson might make.</p> |

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| <p>Page 318</p> <p>1 BY MR. HEGARTY:</p> <p>2 Q. Have you read the JAMA O'Brien 2020</p> <p>3 article on talcum powder and ovarian cancer?</p> <p>4 A. I am pretty sure I have, but I would</p> <p>5 love to be refreshed on any one of these.</p> <p>6 Q. You don't comment about that in your</p> <p>7 report, do you?</p> <p>8 A. Again, presumably, you're asking me</p> <p>9 this because I -- because I don't.</p> <p>10 My -- my comments on the -- on the</p> <p>11 scientific literature go through a timeline and</p> <p>12 looking at key studies, but I do believe I've seen</p> <p>13 that. I'd love to see it again if you want to</p> <p>14 show it to me.</p> <p>15 Q. If you look at paragraph 71 of your</p> <p>16 report, is your only authority for the statements</p> <p>17 you make what you cite at the end "21 CFR 740.1 et</p> <p>18 seq."?</p> <p>19 A. So it is a combination of the nature</p> <p>20 of cosmetics regulation compared to, say, the</p> <p>21 nature of drug regulation, and a central aspect of</p> <p>22 my analysis and opinions is that these two</p> <p>23 regulatory regimes are quite different.</p> <p>24 Mostly because in the -- in terms of</p> | <p>Page 320</p> <p>1 uncertainty.</p> <p>2 The only way to -- the only</p> <p>3 disagreement -- well, the only difference</p> <p>4 of opinion in terms of risk and</p> <p>5 uncertainty is whether uncertainty is</p> <p>6 subsumed in risk in the -- in the</p> <p>7 economics literature.</p> <p>8 Once one teases the two things</p> <p>9 out, I mean, if we could put it in the</p> <p>10 national defense context and talk about</p> <p>11 the known unknowns and the unknown</p> <p>12 unknowns, but the uncertainty is the</p> <p>13 central regulatory obligation of 740.10.</p> <p>14 So I don't need more authority</p> <p>15 than it's explicit in the regulation.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. My question is a little bit</p> <p>18 different. Listen to my question, Doctor.</p> <p>19 Is the word "uncertainty" used</p> <p>20 anywhere within 21 CFR 740.10 or anywhere in the</p> <p>21 cosmetic regulations?</p> <p>22 MS. PARFITT: Objection.</p> <p>23 DR. THOMPSON: Objection.</p> <p>24 Form.</p> |
| <p>Page 319</p> <p>1 drug authorities, FDA's role, its preventive role</p> <p>2 and all of its regulatory authorities are far more</p> <p>3 detailed, far more self-executing, and are much</p> <p>4 more consistent with a compliance mind-set among</p> <p>5 the regulated entities.</p> <p>6 Whereas, for cosmetics regulation,</p> <p>7 the principal obligations are informational and</p> <p>8 virtually all of the requirements are for</p> <p>9 self-regulation that results in safe products.</p> <p>10 Q. Can you cite for me any authority</p> <p>11 saying that there is a low threshold for</p> <p>12 disclosure risk?</p> <p>13 A. That is my conclusion based on the</p> <p>14 lack of offsetting benefit for cosmetic, and that</p> <p>15 is -- and that's an established position in the</p> <p>16 literature, but I don't cite specifically.</p> <p>17 Q. And you already told us that you</p> <p>18 cannot cite any authority in the regulatory</p> <p>19 setting that uses the word "uncertainty" when it</p> <p>20 comes to the labeling of cosmetics, correct?</p> <p>21 DR. THOMPSON: Object to form.</p> <p>22 THE WITNESS: Disagree in</p> <p>23 that the 740.10 obligation is about</p> <p>24 safety not being determined, which is</p> | <p>Page 321</p> <p>1 THE WITNESS: No.</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. For Johnson's Baby Powder, when</p> <p>4 should it have carried a risk of a warning -- when</p> <p>5 should it have carried a warning of a risk of</p> <p>6 ovarian cancer?</p> <p>7 DR. THOMPSON: Object to form.</p> <p>8 THE WITNESS: I think, at a</p> <p>9 minimum, by the early 1970s, it should</p> <p>10 have carried a -- a warning of a</p> <p>11 potential health hazard. That was</p> <p>12 informed by what was already worrisome</p> <p>13 literature on ovarian cancer risk.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. Should a cosmetic manufacturer warn</p> <p>16 of a risk that does not exist?</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: Again, a risk</p> <p>19 is a known probability. If the known</p> <p>20 probability is zero, then there is no</p> <p>21 risk and there's no warning obligation.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. Likewise, is a cosmetic -- is a</p> <p>24 cosmetic manufacturer required to warn about a</p> |

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| <p>1 health hazard that does not exist?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: So to answer</p> <p>4 these questions, best -- best to use the</p> <p>5 actual regulatory language. So we can --</p> <p>6 BY MR. HEGARTY:</p> <p>7 Q. Well, do you need regulatory</p> <p>8 language to say?</p> <p>9 A. Yes. Actually, when one is</p> <p>10 paraphrasing an obligation, yeah.</p> <p>11 So, you know, talks about "necessary</p> <p>12 or appropriate to prevent a health hazard that may</p> <p>13 be associated with the product."</p> <p>14 So if you are saying that there is</p> <p>15 no probability, no possibility that a health</p> <p>16 hazard may be associated with a product, then</p> <p>17 there is no warning obligation.</p> <p>18 Q. Okay. If you look over at paragraph</p> <p>19 77.</p> <p>20 A. Uh-huh.</p> <p>21 Q. You talk about 740.1 in that</p> <p>22 paragraph, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Can you cite for me any published</p> | <p>1 discussing and the reason we're here,</p> <p>2 there are many, many scientific studies</p> <p>3 that show non- -- non-1 confidence</p> <p>4 intervals that -- that raise, I think,</p> <p>5 indisputable concerns about possible</p> <p>6 health hazards which means</p> <p>7 nonsubstantiation for safety.</p> <p>8 Is there a definitive</p> <p>9 hierarchy? No, and it's going to be</p> <p>10 depend on context. But, you know,</p> <p>11 something that has never been</p> <p>12 studied that nobody is really thinking,</p> <p>13 much substantiation -- and there's no</p> <p>14 suggestion that there's an injury,</p> <p>15 substantiation for safety may be</p> <p>16 accomplished in a relatively</p> <p>17 straightforward way.</p> <p>18 But when we have good science</p> <p>19 that shows a possible increased risk of a</p> <p>20 substantial degree for a fatal disease</p> <p>21 and we have this repeatedly over decades,</p> <p>22 I don't think it's seriously in doubt</p> <p>23 that -- that talcum powder products</p> <p>24 haven't been substantiated for safety.</p> |
| <p>1 authorities that identify the studies that must be</p> <p>2 done to adequately substantiate the safety of a</p> <p>3 product?</p> <p>4 DR. THOMPSON: Object to form.</p> <p>5 THE WITNESS: I'm sorry. I</p> <p>6 think -- I think that the paragraph -- I</p> <p>7 thought you said paragraph 77, which is</p> <p>8 about --</p> <p>9 BY MR. HEGARTY:</p> <p>10 Q. I'm sorry. 78.</p> <p>11 A. All right.</p> <p>12 Q. Look at paragraph 78.</p> <p>13 A. Sorry about that.</p> <p>14 Q. Can you cite for me any published</p> <p>15 authority that identifies the study that must be</p> <p>16 done to adequately substantiate the safety of a</p> <p>17 cosmetic product?</p> <p>18 DR. THOMPSON: Object to form.</p> <p>19 THE WITNESS: There are, I</p> <p>20 believe, documents that nondefinitively</p> <p>21 and nonexclusively and noncomprehensively</p> <p>22 suggest the sorts of things that could</p> <p>23 build into substantiation for safety.</p> <p>24 But remember what we've been</p> | <p>1 BY MR. HEGARTY:</p> <p>2 Q. Listen to my question. That's not</p> <p>3 what I asked you, Doctor.</p> <p>4 You make reference to the 740.10(a)</p> <p>5 and talk about that "each ingredient used in a</p> <p>6 cosmetic and each finished cosmetic product shall</p> <p>7 be adequately substantiated for safety prior to</p> <p>8 marketing."</p> <p>9 My question is: Is there a written</p> <p>10 published standard for what a manufacturer must --</p> <p>11 for what tests a manufacturer of a cosmetic must</p> <p>12 do to substantiate the safety of that product</p> <p>13 before marketing?</p> <p>14 A. My opinion is that substantiation</p> <p>15 for safety is contextual, and that there have been</p> <p>16 statements from time to time in particular</p> <p>17 contexts, but nothing that I regard as definitive.</p> <p>18 Q. The manufacturer must assess the</p> <p>19 studies and determine if the cosmetic safety is</p> <p>20 substantiated, correct?</p> <p>21 A. Correct.</p> <p>22 Q. You understand that Johnson &</p> <p>23 Johnson has repeatedly done so as to Johnson's</p> <p>24 Baby Powder, Shower to Shower, correct?</p> |

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| <p>1 DR. THOMPSON: Object to form. 2 THE WITNESS: I understand 3 those are Johnson & Johnson's conclusions 4 from the studies that it has done. 5 It is also my understanding 6 that Johnson & Johnson has not 7 participated actively in efforts to 8 further study its product. 9 If we're just talking -- if 10 we're talking only about asbestos, that's 11 one piece of this. If we're talking 12 about the overall connections between 13 talc -- perineal use of talcum powder 14 products and ovarian cancer, it goes way 15 beyond asbestos testing.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. Well, you have reviewed, as we 18 talked earlier, about the 2020 Johnson's Baby 19 Talcum Powder: A Comprehensive Review document 20 dated March 17, 2020, correct?</p> <p>21 A. Yes.</p> <p>22 Q. That's the last document in the 23 notebook you have in front of you, correct?</p> <p>24 A. Correct.</p> | <p>1 DR. THOMPSON: Object to form. 2 THE WITNESS: I don't believe 3 Johnson & Johnson has done that.</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. You disagree with Johnson & Johnson, 6 correct?</p> <p>7 A. Correct.</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 BY MR. HEGARTY:</p> <p>10 Q. You're making your own subjective 11 judgment on whether safety has been substantiated, 12 correct?</p> <p>13 DR. THOMPSON: Object to form.</p> <p>14 THE WITNESS: No. I am making 15 an expert determination based on many 16 scientific determinations and compendia 17 and other regulatory judgments that raise 18 persistent and serious questions about 19 substantiation for safety, such that, no, 20 I do not believe that substantiation for 21 safety has occurred.</p> <p>22 And I conclude that the 740.10 23 obligation of disclosure of uncertainty 24 is operative.</p> |
| <p>1 Q. And you -- have you reviewed the 2 testimony of Johnson & Johnson's chief medical 3 officer, Dr. Kuffner?</p> <p>4 A. I did not read that -- if that was 5 deposition testimony, I did not read that 6 deposition in detail.</p> <p>7 Q. You understand that Johnson & 8 Johnson currently and has always concluded that 9 its talcum powder products are safe and that the 10 safety is substantiated?</p> <p>11 DR. THOMPSON: Object to form.</p> <p>12 THE WITNESS: I clearly 13 understand that is the company's 14 position. I do not understand the basis 15 for that judgment.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. The regulations and authorities you 18 cite all provide that the manufacturer is to make 19 this determination.</p> <p>20 You understand that, right?</p> <p>21 A. That's not a statement of deference.</p> <p>22 That's a statement of obligation.</p> <p>23 Q. Johnson & Johnson has done so.</p> <p>24 You understand that?</p> | <p>1 BY MR. HEGARTY:</p> <p>2 Q. And you think that a jury should 3 believe you over Johnson & Johnson where you first 4 started looking at this issue three months ago; is 5 that correct?</p> <p>6 DR. THOMPSON: Objection.</p> <p>7 THE WITNESS: I think juries 8 are entitled to conclude what juries 9 conclude.</p> <p>10 I think the existence of this 11 regulatory obligation and its connection 12 to the information environment that 13 Johnson & Johnson has created around this 14 one legacy product is something from 15 which juries may draw exactly the 16 conclusion that I have.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. You have never in any publication of 19 yours cited to 21 CFR 740.1, correct?</p> <p>20 A. Are we on .1 or .10? But the answer 21 would be for both of them, no.</p> <p>22 Q. And you've never given a 23 presentation where you have talked about 21 CFR 24 740.1 or 740.10, or any cosmetic regulation that</p> |

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| <p>1 you're talking about in this report, correct?</p> <p>2 A. Correct.</p> <p>3 MR. HEGARTY: Let's go ahead</p> <p>4 and take a break.</p> <p>5 (Recess: 3:02 p.m. -</p> <p>6 3:17 p.m.)</p> <p>7 MR. HEGARTY: We are back on</p> <p>8 the record.</p> <p>9 BY MR. HEGARTY:</p> <p>10 Q. I wanted to look at next -- look</p> <p>11 next at paragraph 81 of your expert report.</p> <p>12 A. Uh-huh.</p> <p>13 Q. In the first line of that paragraph</p> <p>14 you say that:</p> <p>15 "Johnson & Johnson has a legal duty</p> <p>16 to account -- to take account of 'new information'</p> <p>17 putting the safety of its talcum powder products</p> <p>18 in question, even if the information is itself not</p> <p>19 conclusive."</p> <p>20 What is the authority for or what is</p> <p>21 the legal duty? Where -- what statute, what</p> <p>22 regulation where that legal duty found?</p> <p>23 A. Okay. So that -- that authority</p> <p>24 comes -- comes right out of 740.10(b), you know,</p> | <p>Page 330</p> <p>1 What was it about the '70s from your</p> <p>2 standpoint would have triggered the need to</p> <p>3 provide a warning with regard to health risk with</p> <p>4 talcum powder products?</p> <p>5 A. So as you know, in the 1970s, cancer</p> <p>6 risks from asbestos became, you know, of general</p> <p>7 concern, but environmental cancer risks became a</p> <p>8 general concern. Going into the history of</p> <p>9 cancer, this is the period, and it's no</p> <p>10 coincidence that this is, you know, the Nixon</p> <p>11 Administration's, you know, the EPA, motor vehicle</p> <p>12 safety. There's a whole bunch of sort of kind of</p> <p>13 post-NASA investments in scientific-based health</p> <p>14 and safety regulations, the OSHA Act, the</p> <p>15 Occupational Safety and Health Act.</p> <p>16 So, you know, this is a period when</p> <p>17 people are looking at potential environmental</p> <p>18 triggers for various cancers, and that's when many</p> <p>19 of these studies are done. And more of them are</p> <p>20 being done, and they're not motivated by anything</p> <p>21 other than genuine scientific curiosity on about</p> <p>22 environmental exposure and its health</p> <p>23 consequences.</p> <p>24 Q. Assume for purpose of my question</p> |
| <p>Page 331</p> <p>1 it's in the appendix on page 39 of the report that</p> <p>2 says "An ingredient or product may at any time</p> <p>3 have its safety brought into question by new</p> <p>4 information that is itself not conclusive."</p> <p>5 Q. Okay.</p> <p>6 A. And that's intended to convey an</p> <p>7 ongoing duty of the manufacturer to substantiate</p> <p>8 safety. We're not talking about a one-shot, and</p> <p>9 meaning specifically that new information that</p> <p>10 might suggest that -- that the prior assumed</p> <p>11 substantiation was inaccurate needs to be taken</p> <p>12 account of and a decision, again, made whether to</p> <p>13 disclose that safety hasn't been determined.</p> <p>14 And this is exactly the sorts of</p> <p>15 thing you would expect to become operative in a</p> <p>16 situation like ovarian cancer developing from --</p> <p>17 from -- from talcum powder in that we have latency</p> <p>18 and a relatively uncommon condition and, you know,</p> <p>19 something that might have appeared safe in, you</p> <p>20 know, 1950 might not appear safe by, you know,</p> <p>21 1975.</p> <p>22 Q. And you made reference earlier to</p> <p>23 the fact, according to you, that warning would</p> <p>24 have been required in the '70s.</p> | <p>Page 333</p> <p>1 that there is no asbestos in talcum powder</p> <p>2 products.</p> <p>3 Would that change your opinions in</p> <p>4 this case?</p> <p>5 DR. THOMPSON: Object to form.</p> <p>6 THE WITNESS: If, in fact,</p> <p>7 there were zero fibers of asbestos or of</p> <p>8 asbestiform talc in products, it would</p> <p>9 change some, but not all, of my opinions;</p> <p>10 and it certainly would not change my</p> <p>11 opinions regarding nonsubstantiation for</p> <p>12 safety.</p> <p>13 BY MR. HEGARTY:</p> <p>14 Q. In paragraph 85, you make reference</p> <p>15 to the IARC Monograph 100C, which we marked and is</p> <p>16 sitting to your right, and you make the statement</p> <p>17 in that paragraph that says that:</p> <p>18 "The Monograph provides a detailed</p> <p>19 discussion of occupational exposures to asbestos</p> <p>20 and talc in which inhalation presents the primary</p> <p>21 exposure, but this is not the only purpose."</p> <p>22 That's not correct, is it? That</p> <p>23 monograph makes no reference to occupational</p> <p>24 exposure -- studies of occupational exposure to</p> |

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| <p>1 talc, does it?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: I would have to</p> <p>4 -- I would have to go back and look if I</p> <p>5 -- if I'm incorrect about -- well, no, in</p> <p>6 the sense that it covers both asbestos</p> <p>7 and fibrous product, I would have to</p> <p>8 stand by that because that's all I meant</p> <p>9 by the statement. It was -- it was talc</p> <p>10 fibers on a par with asbestos.</p> <p>11 So that is correct.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. Are you aware that with regard to</p> <p>14 IARC's findings as it relates to asbestos and</p> <p>15 ovarian cancer that none of the studies they</p> <p>16 evaluated involved exposure to talcum powder?</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: Would you</p> <p>19 repeat that?</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. Sure.</p> <p>22 A. I couldn't tell.</p> <p>23 Q. Are you aware that with regard to</p> <p>24 IARC's findings as it relates to asbestos and</p> | <p>1 exposure. I've seen the back-and-forth</p> <p>2 about the advantages and disadvantages of</p> <p>3 various designs and whether occupational</p> <p>4 exposure to asbestos is relevant to</p> <p>5 assessment of the studies regarding</p> <p>6 talcum powder use exposure to whatever</p> <p>7 the things are in talcum powder that</p> <p>8 predispose to -- to ovarian cancer.</p> <p>9 I've seen all of that</p> <p>10 discussion. I don't think any of it</p> <p>11 changes my views.</p> <p>12 My views are, you know,</p> <p>13 fundamentally based on what I conclude is</p> <p>14 the presence of asbestos and asbestiform</p> <p>15 particles in talc and on the failure of</p> <p>16 Johnson & Johnson to meet its regulatory</p> <p>17 obligations regarding uncertainty.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. Did you read the individual studies</p> <p>20 on asbestos exposure and ovarian cancer cited by</p> <p>21 the IARC Monograph 100C?</p> <p>22 A. On asbestos exposure and ovarian</p> <p>23 cancer? I'd have to go look and see which those</p> <p>24 were.</p> |
| <p>1 ovarian cancer, particularly the studies they</p> <p>2 looked at, none of those studies involved exposure</p> <p>3 or alleged exposure to asbestos from talcum powder</p> <p>4 products?</p> <p>5 DR. THOMPSON: Same objection.</p> <p>6 THE WITNESS: I don't know</p> <p>7 that. I would have to go back and look.</p> <p>8 They may have looked at actual or</p> <p>9 potential sources of asbestos.</p> <p>10 BY MR. HEGARTY:</p> <p>11 Q. And do you recall that the IARC's</p> <p>12 findings as it relates to asbestos and ovarian</p> <p>13 cancer were based primarily on five cohorts --</p> <p>14 five heavy occupational cohort studies --</p> <p>15 DR. THOMPSON: Objection.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. -- of workers exposed to raw</p> <p>18 asbestos --</p> <p>19 DR. THOMPSON: Objection.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. -- in their employment?</p> <p>22 DR. THOMPSON: Objection.</p> <p>23 THE WITNESS: I have seen</p> <p>24 discussions about occupational asbestos</p> | <p>1 Page 335</p> <p>1 Q. Do you recall looking at the</p> <p>2 monograph and pulling the studies that it cites</p> <p>3 and reading the actual studies themselves?</p> <p>4 A. I did not pull underlying studies</p> <p>5 from -- from this IARC report. Whether there's</p> <p>6 some overlap between studies that I reviewed in</p> <p>7 detail and these I can't say without doing the</p> <p>8 crosswalk.</p> <p>9 Q. Are you aware of the concern with</p> <p>10 regard to the studies looking at asbestos exposure</p> <p>11 and ovarian cancer risk of misclassification</p> <p>12 between peritoneal mesothelioma and ovarian</p> <p>13 cancer?</p> <p>14 DR. THOMPSON: Object to form.</p> <p>15 THE WITNESS: I cannot recall</p> <p>16 an extensive discussion that -- of</p> <p>17 potential confounders between peritoneal</p> <p>18 mesothelioma and ovarian cancer, and I</p> <p>19 invite you to show me something if you</p> <p>20 have something to show me.</p> <p>21 I have trouble seeing why that</p> <p>22 would change the overall views that have</p> <p>23 been expressed regarding from good</p> <p>24 studies and large -- large organizational</p> |

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| <p>1 conclusions that there is a substantial 2 increased risk as a result of talcum 3 powder exposure perineally. 4 BY MR. HEGARTY: 5 Q. As a doctor, do you understand 6 whether there's any difficulties in diagnosing 7 ovarian cancer from peritoneal mesothelioma? 8 DR. THOMPSON: Object to form. 9 THE WITNESS: As a -- as a 10 matter cellular pathology, I've never 11 considered the question. 12 BY MR. HEGARTY: 13 Q. You're not a pathologist, right? 14 A. No. 15 Q. If we look over at paragraph 121 of 16 your report, on what documents do you rely for 17 your statement in paragraph 121 that "Johnson & 18 Johnson manipulated asbestos testing"? 19 A. I was -- I was concerned by the 20 back-and-forth regarding what the sensitivity 21 thresholds should be with -- with whatever FDA 22 regarded as the acceptable assay method. 23 So if we look, again, that 121 is as 24 it says in some paragraph and it derives from the</p> | <p>Page 338</p> <p>1 Q. Did you read -- have you read all 2 the associated documents in Johnson & Johnson 3 testimony with regard to the document referenced 4 in your paragraph 116? 5 A. I doubt I have. 6 Q. Is it your testimony that Johnson & 7 Johnson intended to deceive by its testing and 8 publicity as it relates to asbestos testing? 9 DR. THOMPSON: Object to form. 10 THE WITNESS: As we've 11 discussed previously, my testimony does 12 not go to Johnson & Johnson's corporate 13 motive or intent. 14 BY MR. HEGARTY: 15 Q. Do all test methods for asbestos in 16 talcum powder products have limits of detection? 17 DR. THOMPSON: Object to form. 18 THE WITNESS: All practical 19 methods would. Conceptually, not 20 necessarily. If you look at everything, 21 in everything you presumably find it. 22 Fibers are fibers, and they are 23 conceptually detectable. 24 BY MR. HEGARTY:</p> |
| <p>1 paragraphs that precede it. 2 So if we go -- if we go back and 3 review that, you see a proposed regulation in 1973 4 calling for an amphibole 99.9 percent purity 5 standard and 99.99 for chrysotile and using 6 polarized microscopy, and then correspondence 7 subsequently involving Johnson & Johnson and FDA 8 and the Personal Care Products Council, which 9 including the statement in paragraph 116. 10 "We believe it is critical for the" 11 then predecessor -- the predecessor organization 12 "to now recommend these methods to the FDA before 13 the art advances to more sophisticated techniques 14 with higher levels of sensitization." 15 Which I think a fair reading of that 16 is that Johnson & Johnson prefers to have no 17 asbestos detectable in its products. 18 And certainly if one combines that 19 even with the current website, which I have to say 20 really does concern me, these statements about 21 purity and the absence of contamination, I think 22 there is a historical story here that is a -- I 23 think it would be fair to characterize it as 24 woeful ignorance.</p> | <p>Page 339</p> <p>1 Q. Is there a test method that shows 2 that no detection means none? 3 DR. THOMPSON: Object to form. 4 THE WITNESS: Is there a test 5 method that means none detected means 6 none? In this context? 7 BY MR. HEGARTY: 8 Q. Correct. 9 A. There should be test methods that 10 can be applied to small samples that will say that 11 none detected in the sample means none in the 12 sample, but we're always in a sampling situation. 13 So, yes, there will always be 14 choices in terms of sensitivity and detection 15 limits as a practical matter. 16 Q. So you acknowledge that with regard 17 to any testing method that humans are capable of 18 here in 2021, there will be limits of detection, 19 correct? 20 DR. THOMPSON: Object to form. 21 THE WITNESS: I think there 22 are different forms of limits, and here 23 -- here this ties back for me to -- to disclosures of uncertainties as well as</p> |

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| <p>1 to disclosures of -- of known risks. In 2 the -- in the sense that there's no 3 suggestion, for example, on the Johnson & 4 Johnson website that other than, you 5 know, one lot that in Johnson & Johnson's 6 retelling was mistakenly characterized as 7 containing asbestos by FDA's contract 8 labs, that there could ever be asbestos 9 in Johnson & Johnson's talc. 10 I think that is, in some ways, 11 Johnson & Johnson is the one asserting 12 the position you're ascribing to me in 13 that question. They're the ones who are 14 claiming that there are no -- there are 15 no limits. That, in fact, they can 16 simply say there is nothing because we 17 didn't find it in the way we looked.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. Do you have an opinion as to what 20 testing methods of talc for asbestos are 21 acceptable to substantiate the safety of the 22 product as it relates to asbestos?</p> <p>23 DR. THOMPSON: Object to form.</p> <p>24 THE WITNESS: Again, that's</p> | <p>1 matter Johnson & Johnson has never 2 accounted for that in the ways that the 3 regulation requires.</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. You already told us that you don't 6 know the testing methods that Johnson & Johnson 7 has used over the last 50 years to test its talc 8 for the presence of asbestos, correct?</p> <p>9 A. I know the correspondence regarding 10 J4-1, regarding some of these other thresholds, I 11 know are fairly significant; and these paragraphs 12 documented disagreement between the company's 13 position on sensitivity and the FDA's proposed 14 rule. A lot of harm can be caused by the 15 differences between those testing standards.</p> <p>16 Q. Not my question.</p> <p>17 My question is: Do you agree that 18 you don't know what testing methods that Johnson & 19 Johnson used over the last 50 years to test its 20 talcum powder products for the presence of 21 asbestos --</p> <p>22 DR. THOMPSON: Object to form.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. -- correct?</p> |
| <p>1 not the -- that's not an expert opinion 2 that I'm giving.</p> <p>3 That said, I've seen the 4 descriptions of the last couple of years 5 of sort of FDA efforts to improve 6 asbestos detection, and I don't think any 7 of that has resulted in a definitive 8 statement, but perhaps one is 9 forthcoming.</p> <p>10 BY MR. HEGARTY:</p> <p>11 Q. If you don't have an opinion as to 12 what testing method is appropriate to substantiate 13 that there's no asbestos in talcum powder 14 products, how do you know that that method is not 15 being used today?</p> <p>16 DR. THOMPSON: Object to form.</p> <p>17 THE WITNESS: I have an 18 opinion that over the relevant timeline 19 history of when the women plaintiffs 20 counsel represents have been exposed to 21 Johnson's Baby Powder, the testing 22 methods used were insufficient to rule 23 out levels of asbestos that could cause 24 carcinogenesis, and that as a regulatory</p> | <p>1 A. I could not map for you detection 2 methods used by Johnson & Johnson in each decade 3 over the last 50 years.</p> <p>4 Q. And it's not your testimony in this 5 case as far as what testing methods must be done 6 as it relates to asbestos, looking for asbestos in 7 talc, to substantiate the safety of that product 8 as it relates to asbestos, correct?</p> <p>9 DR. THOMPSON: Object to form.</p> <p>10 THE WITNESS: So the -- so, 11 again, forgive me. I'm really not trying 12 to be argumentative here.</p> <p>13 Substantiation for safety is 14 not a matter of detectable asbestos.</p> <p>15 Substantiation for safety is: 16 Does perineal use of baby powder -- of 17 talc containing baby powder products 18 increase a woman's chance of contracting 19 ovarian cancer?</p> <p>20 And that is a health hazard, 21 which, if that has not been proven to be 22 a zero risk or perhaps such a small risk 23 that we could not consider it clinically 24 significant, in that case, at a minimum,</p> |

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| <p>1 disclosure of nonsubstantiation for 2 safety has to be made under the 3 regulation.</p> <p>4 I don't want to get -- I mean, 5 the presence of asbestos to me is 6 compelling. The presence of asbestosiform 7 talc is compelling.</p> <p>8 Those components, in my expert 9 opinion, place regulatory obligations of 10 disclosure and warning and instruction, 11 some type of mitigation effort by the 12 company, but some sort of mitigation 13 obligation on the company, which I don't 14 think the company has ever complied with 15 or even seriously attempted to consider 16 and -- but those are independent of this 17 740.10 obligation regarding uncertainty.</p> <p>18 And every time there's a new 19 study, every time there's a new report, 20 every time there's a regulatory finding 21 by a non-U.S. regulator, all of this in 22 the paragraph that you asked me about a 23 few minutes ago constitutes new 24 information, of which the company is</p> | <p>1 circumstances, it is Johnson & Johnson's 2 obligation to have done a whole lot more 3 study to this than they apparently have, 4 and that would be my testimony.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. But your -- and that testimony is, 7 according to your standard, as of 2021, to meet 8 the obligations under your interpretation of the 9 cosmetic regulations, Johnson & Johnson must prove 10 a negative, that talcum powder is incapable of 11 causing ovarian cancer, correct?</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 THE WITNESS: No, I did not 14 say that.</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. So it's not your testimony that 17 Johnson & Johnson's obligation of the regulation 18 is to prove that talcum powder use cannot cause 19 ovarian cancer, correct?</p> <p>20 DR. THOMPSON: Object to form.</p> <p>21 THE WITNESS: Johnson & 22 Johnson's obligation under 740.10 is 23 either to prove that use of talcum powder 24 products does not cause ovarian cancer,</p> |
| <p>1 legally obligated to take account.</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. Under your standard, it's Johnson & 4 Johnson's obligation to prove that talcum powder 5 use does not cause ovarian cancer, correct?</p> <p>6 MS. PARFITT: Objection.</p> <p>7 Form.</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: If there were 10 no studies suggesting that it did and no 11 reason to think that it would, it's not 12 in my reading of cosmetic self-regulation 13 incumbent to specifically disprove every 14 conceivable harm.</p> <p>15 The obligation is to 16 substantiate safety for the product as 17 labeled and as reasonably and customarily 18 used. It's the same as the warning 19 standard, in essence.</p> <p>20 But in light of 1970s to 21 today, roughly 40 years of sustained 22 scientific interest in and controversy 23 regarding ovarian cancer risk from 24 perineal talcum powder, yes, under those</p> | <p>1 which today in 2021 it will be unable to 2 do, or to put in place, as it should have 3 for many, many years, the required 4 disclosure of "safety not determined," or 5 as it has done for whatever reason it 6 asserts to reformulate the product so 7 it's not sold to the United States or 8 Canada. And I wish it weren't sold 9 anywhere in the world.</p> <p>10 BY MR. HEGARTY:</p> <p>11 Q. But you would agree, at least on 12 your medical background, as it relates to exposure 13 and disease, it's impossible for anybody to prove 14 a negative, correct?</p> <p>15 DR. THOMPSON: Objection.</p> <p>16 Form.</p> <p>17 THE WITNESS: I can't really 18 answer that question.</p> <p>19 There are negatives that can 20 be proved to high degrees of statistical 21 probability. In the sense of conditions 22 that are extremely evident that have no 23 other causes, you know, there are ways to 24 prove a negative.</p> |

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| <p>1 When there is, you know, a 2 condition that is multifactorial, when 3 there is a condition that has latency, 4 there's conditions that suit a lot of -- 5 a lot of cancer development, then, yes, 6 it would be very, very hard to prove a 7 negative.</p> <p>8 And yet even there, we have 9 epidemiological studies all the time that 10 are done and, frankly, you know, drug and 11 device studies that are done -- well, 12 drug studies that are done all the time 13 that in essence demonstrate to a level of 14 statistical certainty that there's no 15 increased risk.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. You comment in this part of your 18 report beginning at page 19 about CIR; is that 19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. Are you an expert on the process by 22 which CIR reviews cosmetic ingredients?</p> <p>23 A. I've read a fair amount about it in 24 connection with this case.</p> | <p>Page 350</p> <p>1 testimony referenced in your materials. 2 Did you read his testimony? 3 A. If we can point me to it, I might 4 remember. I don't -- I don't -- just so you know, 5 I remember things by substance generally, not by 6 title.</p> <p>7 Q. He was the head of the CIR during 8 the time it reviewed talc. 9 Do you recall that?</p> <p>10 A. I do recall reading -- reading some 11 testimony about -- about the CIR -- the specifics 12 of the CIR talc review. I don't recall reading 13 his testimony.</p> <p>14 Q. Are you aware that he testified that 15 the CIR properly reviewed talc?</p> <p>16 A. I'm not aware of that. It wouldn't 17 surprise me.</p> <p>18 Q. Are you aware he testified that the 19 CIR review was independent of any industry or 20 other group?</p> <p>21 DR. THOMPSON: Object to form. 22 THE WITNESS: Again, I don't 23 think I read his testimony, or at least I 24 can't recall it right now. The</p> |
| <p>Page 351</p> <p>1 Q. Have you ever reviewed anything 2 about the CIR and its processes before being 3 contacted by plaintiffs' counsel in this case?</p> <p>4 A. No. I find it very interesting, 5 though.</p> <p>6 Q. Have you ever been involved in a CIR 7 review?</p> <p>8 A. No.</p> <p>9 Q. Have you ever studied a CIR review 10 besides its review for talcum powder products?</p> <p>11 A. In connection with this case and 12 reviewing cosmetics law and regulation and 13 self-regulatory processes, yes, I have read about 14 other CIR processes. And that 1998 internal 15 study -- FDA study that we've discussed, and that 16 you made a copy of, has a fairly extensive 17 discussion of both the advantages and the profound 18 disadvantages and questions around CIR.</p> <p>19 Q. Have you discussed with anyone at 20 CIR how it reviews cosmetic ingredient petitions?</p> <p>21 A. No.</p> <p>22 Q. Do you know who Alan Anderson is?</p> <p>23 A. No.</p> <p>24 Q. Do you know -- you have his</p> | <p>Page 351</p> <p>1 particular information you're sharing is 2 not specific.</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. Do you recall -- so you didn't read 5 his testimony that he said -- where he said that 6 CIR does not favor industry?</p> <p>7 DR. THOMPSON: Object to form. 8 THE WITNESS: No, but there 9 is other evidence that CIR has both 10 perceived and actual conflicts of 11 interest.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. Are you aware that he prepared an 14 expert report?</p> <p>15 DR. THOMPSON: Object to form. 16 THE WITNESS: No, I'm not.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. Have you reviewed his expert report 19 in this litigation?</p> <p>20 DR. THOMPSON: Object to form. 21 THE WITNESS: No, but I'd be 22 very happy to.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. Would that be something you'd be</p> |

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| <p>1 interested in seeing?</p> <p>2 A. Very much.</p> <p>3 Q. Because you do comment on the CIR in</p> <p>4 your report, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Don't you think it would be</p> <p>7 appropriate to read the testimony and the expert</p> <p>8 report of the person who was overseeing the CIR</p> <p>9 when it looked at talcum powder?</p> <p>10 MS. PARFITT: Object to form.</p> <p>11 DR. THOMPSON: Object to form.</p> <p>12 THE WITNESS: I would be</p> <p>13 delighted to look at any information your</p> <p>14 client would like to offer that bears on</p> <p>15 my opinions.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. Have you asked plaintiffs' counsel</p> <p>18 for any testimony from -- from individuals about</p> <p>19 the CIR process?</p> <p>20 DR. THOMPSON: Object to form.</p> <p>21 THE WITNESS: I asked</p> <p>22 plaintiffs' counsel for documentation</p> <p>23 regarding the origins and early history</p> <p>24 and general continuing activities of CIR.</p> | <p>Page 354</p> <p>1 I also did a little independent</p> <p>2 investigation to see where Citizen's Petitions</p> <p>3 were available online within the FDA, and they</p> <p>4 were not available. I think they were available</p> <p>5 in the device area. Though I can't exactly recall</p> <p>6 now because I didn't take notes on that. But</p> <p>7 there were none -- there was not data available</p> <p>8 currently on the cosmetics side.</p> <p>9 Q. Do you cite the authorities you just</p> <p>10 provided in your answer in your expert report?</p> <p>11 A. The peer-review article is -- is</p> <p>12 cited right -- right here in the paragraph above</p> <p>13 the one that you cited, which was this Chen et al.</p> <p>14 petitioning the FDA.</p> <p>15 The GAO or IG report is not cited in</p> <p>16 the -- in the report but -- in my report, I don't</p> <p>17 believe, but was made available to me after it was</p> <p>18 submitted, and I think has been shared with and</p> <p>19 disclosed to you.</p> <p>20 Q. That's not referenced in your</p> <p>21 report, is it?</p> <p>22 A. That particular, the G -- I think --</p> <p>23 we'll call it the GAO report for lack of having to</p> <p>24 say both each time. It's not referenced in the</p> |
| <p>Page 355</p> <p>1 It didn't occur to me to ask</p> <p>2 about current CIR operations testimony.</p> <p>3 If I had known that was available, I</p> <p>4 certainly would have asked for it.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. If you look over at page 143 of your</p> <p>7 -- I'm sorry -- paragraph 143 of your report.</p> <p>8 A. Uh-huh.</p> <p>9 Q. What is your authority for the</p> <p>10 statement you make in that paragraph?</p> <p>11 In other words, where did you get</p> <p>12 that information from?</p> <p>13 A. So there's a peer-review article on</p> <p>14 Citizen Petition processes, which is cited in the</p> <p>15 report, which -- which I read. I think that -- I</p> <p>16 think the information either came directly out of</p> <p>17 that or was -- or was my back-of-the-envelope</p> <p>18 calculation from what I was seeing in that</p> <p>19 article.</p> <p>20 There's also either a -- either a</p> <p>21 GAO or an Inspector General report on the</p> <p>22 Citizen's Petition process that's about 20 years</p> <p>23 old, but it sheds a lot of light on the delays</p> <p>24 involved with the Citizen's Petition.</p> | <p>Page 355</p> <p>1 report, but it confirmed what I had learned about</p> <p>2 the Citizen's Petition process elsewhere.</p> <p>3 Q. If you turn over to page -- to</p> <p>4 paragraph 162 of your report.</p> <p>5 A. Yes.</p> <p>6 Q. There you refer to FDA Congressional</p> <p>7 activity --</p> <p>8 A. Yes.</p> <p>9 Q. -- concerning the safety of cosmetic</p> <p>10 products?</p> <p>11 A. Yes.</p> <p>12 Q. And there you detail -- in the</p> <p>13 section detail hearings that the House</p> <p>14 subcommittee had in 2019 regarding the safety of</p> <p>15 cosmetic products?</p> <p>16 A. Yes.</p> <p>17 Q. Did you read the transcripts or</p> <p>18 watch the video of those hearings?</p> <p>19 A. I -- I read all the transcripts at</p> <p>20 different levels of detail. There were a lot.</p> <p>21 There were, I think, several days of testimony.</p> <p>22 Some I was able to read more thoroughly than</p> <p>23 others, but I reviewed all -- all the people</p> <p>24 testifying in each day of hearings.</p> |

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| <p>1 Q. Are you aware that plaintiffs' experts testified before that House subcommittee?</p> <p>2 A. I think at the time I reviewed those transcripts, I wasn't aware of who might have been a plaintiffs' expert; but I think in reading some of the transcripts, it became apparent that at least a couple of them were.</p> <p>3 Q. Do you know who Ann McTiernan is?</p> <p>4 A. I read it at the time. I don't recall now.</p> <p>5 Q. Are you aware that plaintiffs' lawyers paid her way to attend that subcommittee hearing?</p> <p>6 DR. THOMPSON: Object to form.</p> <p>7 THE WITNESS: I am now aware of that.</p> <p>8 BY MR. HEGARTY:</p> <p>9 Q. Are you aware that -- that she checked with plaintiffs' lawyers before agreeing to testify at that hearing?</p> <p>10 DR. THOMPSON: Object to form.</p> <p>11 MS. PARFITT: Object to form.</p> <p>12 THE WITNESS: I did not know that. Again, really all I know about the</p> | <p>1 to me, nor would it have mattered to my interpretation of the testimony, to know about people being disinterested in the sense that in a properly convened Congressional hearing everyone is interested.</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. Is it your contention that Congressional hearings are motivated by -- Congressional hearings like this are motivated because of safety concerns in every instance?</p> <p>4 DR. THOMPSON: Object to form.</p> <p>5 THE WITNESS: Congressional hearings are motivated by many things, but safety concerns are one of the many things that elected representatives receive political benefits from addressing.</p> <p>6 BY MR. HEGARTY:</p> <p>7 Q. They can also be motivated by political concerns, correct?</p> <p>8 A. I would resist the characterization of political because it's, I think, in my view, it's a much overused term that we really can't</p> |
| <p>1 testimony is the testimony.</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. Is it your position that -- let me look at that. Strike that.</p> <p>4 A. Again --</p> <p>5 Q. Would you consider Dr. McTiernan to be an uninterested or disinterested scientist?</p> <p>6 DR. THOMPSON: Object to form.</p> <p>7 THE WITNESS: Thank you. Thank you for using those words correctly. I do appreciate it.</p> <p>8 I don't have an opinion on that. When I was reading the hearing testimony -- as I'm sure you know, Congressional hearings are planned and orchestrated and, hopefully, useful and testimony is expert and accurate.</p> <p>9 Those hearings, as I recall, were a combination of sort of expert testimony and layperson testimony of the sort of compelling anecdote variety that is highly representative of Congressional hearings.</p> <p>10 So it would not have occurred</p> | <p>1 explain or even define these days.</p> <p>2 So, again, I don't know if I want to</p> <p>3 -- to try to lecture in this -- in this forum on</p> <p>4 what I know about -- about designing Congressional hearings.</p> <p>5 But in general, the committee chair</p> <p>6 or subcommittee chair that controls the chamber</p> <p>7 controls the hearings and then takes, insofar as</p> <p>8 that person takes input from within her own party</p> <p>9 or across the aisle, different people come to</p> <p>10 testify. Different committees, different</p> <p>11 subcommittees have different levels of</p> <p>12 bipartisanship, different levels of comity, and</p> <p>13 different hearings as a result.</p> <p>14 Q. Is it your testimony that there were</p> <p>15 no political motivations behind the hearing you</p> <p>16 reference in your report?</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: I don't know</p> <p>19 what you mean by "political motivations."</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. Are you --</p> <p>22 A. I'm not being naive. I really don't</p> <p>23 know what you mean by "political motivations."</p> |

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| <p>1 Q. Really? You don't know what 2 political motivations are? 3 A. In this instance, a partisan 4 motivation? A particular electoral outcome? I 5 don't know. What might you mean? 6 Q. Well, all of the above. 7 Do you know whether any of those 8 considerations went into the hearings? 9 A. In these instances -- 10 DR. THOMPSON: Object to form. 11 THE WITNESS: In these 12 instances, I have to say, I'm very much 13 struck by the fact that there has been 14 this Feinstein -- Feinstein-Collins 15 proposal for now I think close to more 16 than five, perhaps closer to 10 years in 17 some form. 18 There is bipartisan support 19 that, you know, the Trump's 20 administration FDA was quite clear on the 21 need for additional cosmetic regulation 22 and, for that matter, it appears that 23 Johnson & Johnson is supportive. 24 And I think my -- my struggle</p> | <p>Page 362</p> <p>1 Dr. Longo whose report you cited spoke at that 2 hearing? 3 A. I don't recall that, but I read the 4 names of all of the participants as I read the 5 hearing transcripts. So I presumably was aware of 6 it at the time. 7 Q. You made mention just a moment ago 8 to legislation introduced by Senator Feinstein. 9 And have you read the press releases 10 she issued with regard to that legislation? 11 A. I actually focused on reading the 12 text of the bill. 13 Q. And the text of the bill does not 14 refer to talcum powder products, does it? 15 A. The text of the bill does not. It's 16 a -- it's a very interesting bill with a lot of 17 provisions that I find attractive and with some 18 provisions that I find rather cryptic that reflect 19 the attempt to secure bipartisanship. 20 Q. Did you read -- so you did not read 21 with regard to her press release that 22 organizations that support the Act include Johnson 23 & Johnson? 24 A. Oh, I did read that part if that was</p> |
| <p>Page 363</p> <p>1 -- my struggle answering these particular 2 questions is best captured by taking us 3 back to the bolded language that precedes 4 the paragraphs that we're discussing, 5 which is just the "Cosmetics regulation 6 may be on the verge of significant reform 7 and improvement because of unprevented 8 harm to consumers" and I say "whether or 9 not manufacturers cooperate." 10 It doesn't mean manufacturers 11 won't cooperate. It just means that it 12 appears to be a political moment where 13 something might happen to finally improve 14 cosmetics regulations and the funds that 15 support it. 16 BY MR. HEGARTY: 17 Q. If you look at paragraph 165 of your 18 report, you again refer to a hearing on March 12, 19 2019, and then other hearings that followed in 20 2019. 21 Do you see that? 22 A. Yes. 23 Q. Are you aware that at those 24 hearings, at least the December 2019 hearing, that</p> | <p>Page 365</p> <p>1 the press release. Yes, because I had mentioned 2 that to you earlier that I had seen some mention 3 that Johnson & Johnson was supportive. I said 4 that several hours ago. 5 Q. Did you make reference to that 6 support anywhere in your report? 7 DR. THOMPSON: Object to form. 8 THE WITNESS: I actually did 9 not have the text of the most recent bill 10 at the time that I submitted the report. 11 It was something I wanted to make sure I 12 was keeping track of as my expert service 13 continues. 14 BY MR. HEGARTY: 15 Q. If you look at paragraph 171 of your 16 report, please. 17 A. Sure. 18 Q. You make reference there to 19 O'Shaughnessy and Wille deposition. 20 Who is O'Shaughnessy? 21 A. I have forgotten who O'Shaughnessy 22 is. Wille was the deposition over a number of 23 days that outlined Johnson & Johnson's regulatory 24 posture with respect to these products. It was a</p> |

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| <p>1 difficult transcript to read.</p> <p>2 Q. What testimony from them are you</p> <p>3 relying on for purposes of any of your statements</p> <p>4 in this paragraph?</p> <p>5 DR. THOMPSON: Object to form.</p> <p>6 THE WITNESS: So I point out</p> <p>7 that this is a summary of opinions</p> <p>8 paragraph that also includes subsumed all</p> <p>9 of the prior -- the prior paragraphs</p> <p>10 and -- and their references.</p> <p>11 So, you know, in this case,</p> <p>12 this has -- this focuses primarily on</p> <p>13 your -- your client's apparent</p> <p>14 uninterest, extensively discussed in the</p> <p>15 Wille transcript, in supporting more</p> <p>16 detailed or definitive studies over the</p> <p>17 decades.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. What do you rely upon from</p> <p>20 Mr. O'Shaughnessy's transcripts for purposes of</p> <p>21 this paragraph?</p> <p>22 A. I can't recall.</p> <p>23 Q. Did you read the entirety of his</p> <p>24 deposition transcript?</p> | <p>1 that's a badly written sentence.</p> <p>2 So I -- I can't interpret</p> <p>3 exactly what the "respond to" words mean,</p> <p>4 but it -- it did not engage in the type</p> <p>5 of responsible corporate behavior in a</p> <p>6 voluntary system that I would like to see</p> <p>7 a company do when it has as much</p> <p>8 experience with event reporting and assay</p> <p>9 and ingredient reporting as Johnson &</p> <p>10 Johnson does in its other lines of</p> <p>11 business.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. We've already established, I</p> <p>14 think -- and you tell me if I'm wrong -- that</p> <p>15 you've never published in the -- in the publicly</p> <p>16 available literature the standards for what it</p> <p>17 takes to be a responsible company as it relates to</p> <p>18 a cosmetic, correct?</p> <p>19 A. Correct.</p> <p>20 Q. You've never lectured on what is</p> <p>21 responsible corporate behavior with regard to a</p> <p>22 cosmetic, correct?</p> <p>23 A. With regard to a cosmetic, correct.</p> <p>24 Q. You've never lectured or taught</p> |
| <p>1 A. I don't believe I read the entirety.</p> <p>2 I do believe I saw it.</p> <p>3 Q. Did you read the entirety of</p> <p>4 Ms. Wille's transcript?</p> <p>5 A. Yes.</p> <p>6 Q. Are you aware that both testified --</p> <p>7 Mr. O'Shaughnessy and Ms. Wille -- that -- Dr.</p> <p>8 Wille -- that there's never been asbestos in</p> <p>9 Johnson & Johnson's talcum powder products?</p> <p>10 Do you recall that testimony?</p> <p>11 A. Again, it was a challenging</p> <p>12 transcript to distill to draw clear conclusions</p> <p>13 from, but I mainly recall Dr. Wille for all of</p> <p>14 these relying herself on other conclusions by</p> <p>15 other Johnson & Johnson employees and</p> <p>16 representatives.</p> <p>17 There was very little, as I recall,</p> <p>18 in that very long transcript that -- that really</p> <p>19 was a matter of her personal knowledge.</p> <p>20 Q. If you look at paragraph 172 of your</p> <p>21 report, what did Johnson & Johnson not respond to</p> <p>22 with regard to FDA?</p> <p>23 DR. THOMPSON: Object to form.</p> <p>24 THE WITNESS: That's --</p> | <p>1 courses on the responsible corporate behavior of a</p> <p>2 manufacturer of a cosmetic, correct?</p> <p>3 A. A cosmetic, correct.</p> <p>4 Q. And prior to being contacted by</p> <p>5 plaintiffs' counsel in this case, you would not</p> <p>6 have called yourself an expert on what is the</p> <p>7 responsible corporate behavior of a manufacturer</p> <p>8 of a cosmetic, correct?</p> <p>9 DR. THOMPSON: Object to form.</p> <p>10 THE WITNESS: I don't -- I</p> <p>11 don't serve as an expert in litigation</p> <p>12 very often, as we've discussed. This is</p> <p>13 the first time in, roughly, a decade.</p> <p>14 I would consider myself an</p> <p>15 expert on responsible corporate behavior</p> <p>16 with respect to health and safety</p> <p>17 generally.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. You have never before this case</p> <p>20 analyzed the -- what you consider to be the</p> <p>21 corporate behavior of a manufacturer of a cosmetic</p> <p>22 product, correct?</p> <p>23 DR. THOMPSON: Object to form.</p> <p>24 THE WITNESS: Correct.</p> |

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| <p>1 BY MR. HEGARTY:</p> <p>2 Q. And never analyzed before being 3 hired in this case with regard to what is a 4 responsible -- what is responsible corporate 5 behavior compliance with the cosmetic regulations, 6 correct?</p> <p>7 DR. THOMPSON: Object to form.</p> <p>8 THE WITNESS: I've never 9 analyzed -- I've never compared a 10 corporation's conduct to the requirements 11 of the cosmetic regulations before 12 becoming involved in this matter.</p> <p>13 BY MR. HEGARTY:</p> <p>14 Q. If we look at paragraph 175, you say 15 "Johnson & Johnson did not register its cosmetics 16 accurately."</p> <p>17 Where did Johnson & Johnson not 18 register its cosmetics?</p> <p>19 A. The registration requirements are 20 voluntary under the existing scheme and, you know, 21 its registration of facilities, but then its 22 products and ingredients that are associated with 23 each facility.</p> <p>24 Something that's very interesting is</p> | <p>1 BY MR. HEGARTY:</p> <p>2 Q. I'll be jumping around a little bit 3 because I went back over. Probably just hit 4 things here or there that may not be a 5 concentrated set of questions about any subject 6 area.</p> <p>7 A. Okay.</p> <p>8 MR. HEGARTY: We talked 9 earlier about whether you had contact 10 with any and communicated with any of the 11 expert of plaintiffs in this case, and 12 I'm going to mark as Exhibit 19 a list of 13 the plaintiffs' experts that have been 14 disclosed in these cases.</p> <p>15 (Document marked for 16 identification as Sage Exhibit 19.)</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. Would you look at that list and tell 19 me whether you know any of those names. I should 20 say, know any of them personally.</p> <p>21 A. (Reviews document.)</p> <p>22 I don't know any of them personally.</p> <p>23 Q. Okay. In talking about your 24 methodology for your review of material, what was</p> |
| <p>1 under the proposed legislation, the 2 Feinstein-Collins bill, not only would 3 registration be mandatory, but it would be an 4 explicit certification in the process of 5 registering a facility for safety of every product 6 and ingredient has been substantiated or that that 7 warning we've long described discussed has been 8 given. So there's a clear understanding that 9 there's a relationship between registering one's 10 facilities and substantiating the safety of one's 11 products and ingredients.</p> <p>12 This, again, these are -- these are 13 conclusions that summarize and distill a lot of 14 the prior contents of -- of my report, and the 15 notion of registering its cosmetics accurately is, 16 in my expert opinion, as we discussed very close 17 to the beginning of today, the ingredients listed 18 are not the full contents of these products.</p> <p>19 MR. HEGARTY: Let's take a 20 break. Let's go off the record.</p> <p>21 (Recess: 4:01 p.m. - 22 4:28 p.m.)</p> <p>23 MR. HEGARTY: All right.</p> <p>24 We're back on the record, Dr. Sage.</p> | <p>1 your method yourself for ensuring that you had the 2 pertinent information that you needed to come to 3 conclusions or opinions in this litigation?</p> <p>4 In other words, what method did you 5 apply to -- to ensure that you had the information 6 you needed to provide opinions in your report?</p> <p>7 A. Yeah. I applied the same method I 8 would be applying if I were writing an article. 9 The same method I would be applying if I were 10 planning a series of classes on a topic.</p> <p>11 Identify the questions in a 12 regulatory context. Go to the regulatory sources. 13 Look at commentary that might be out there. 14 Things that are very relevant to me are historical 15 context, political context, economic context, 16 industrial context.</p> <p>17 Here there was a heavy overlay of -- 18 of scientific research and epidemiology. So I had 19 to sort of identify each of those areas and 20 satisfy myself that I had asked the questions and 21 found the material that would -- that would 22 provide the information I needed.</p> <p>23 Q. Have you ever published that 24 methodology in any article or any document?</p> |

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| <p>1 DR. THOMPSON: Object to form. 2 THE WITNESS: I have not 3 published it. One could infer it from a 4 lot of my work. I have a -- particularly 5 in my longer work, I have a voice and a 6 style that is fairly recognizable among 7 my peer group.</p> <p>8 BY MR. HEGARTY:</p> <p>9 Q. Can you cite for me anyone who has 10 come to the same opinions as you set out in your 11 expert report?</p> <p>12 DR. THOMPSON: Object to form. 13 THE WITNESS: I can't cite 14 anyone who's come to those opinions in 15 this matter.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. And when I'm talking about anyone, 18 I'm talking about in the litigation or outside the 19 litigation.</p> <p>20 Can you cite for me anyone that 21 you're aware of who's come to the same opinions 22 that you have that you set out in your expert 23 report?</p> <p>24 DR. THOMPSON: Object to form.</p> | <p>1 the FDA letter. 2 A. I believe it's right here. I can 3 grab it from the one you gave me. 4 Q. If you look at the first page of 5 that exhibit, Exhibit No. 7, you see the third 6 line it refers to: "Year 1994 petition requested 7 all cosmetic talc bear labels with a warning such 8 as" and then lists the warning, correct? 9 A. Yes. 10 Q. Then if you look a few lines down, 11 it says: "Additionally, year 2008 petition 12 requested that cosmetic talcum powder products 13 bear labels with a prominent warning such as" and 14 then it lists another suggested warning, correct? 15 A. Yes. 16 Q. So is it your contention that even 17 with that "such as" language that FDA would only 18 or only based its conclusions with regard to this 19 letter as to the two samples of warnings in that 20 first paragraph? 21 DR. THOMPSON: Object to form. 22 THE WITNESS: I think the 23 "such as" is the writer of this letter's 24 not fully clear way of expressing in all</p> |
| <p>1 THE WITNESS: I can't cite 2 anyone who has come to the opinions I 3 have regarding this situation and these 4 obligations.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. By citing it in your report, you 7 certainly agree that FDA's April 2014 letter is 8 relevant to the issues that you analyzed in this 9 case, correct?</p> <p>10 MS. PARFITT: Objection. 11 Form.</p> <p>12 THE WITNESS: It is relevant. 13 It is not directly relevant to 14 manufacturer's obligations to warn nor is 15 it directly relevant to manufacturer's 16 obligations to disclose a 17 nonsubstantiation of safety.</p> <p>18 It is certainly relevant to 19 the relationship between the FDA and the 20 other parties who might be involved in 21 approving the safety of cosmetics.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. Do you have that exhibit? It's 24 Exhibit No. 7, or you can look in your notebook to</p> | <p>1 Page 375</p> <p>1 material respects "equivalent to." So 2 that a word or two might vary, but the 3 thrust of it was identical. 4 I don't think that this 5 paragraph implies that the FDA is 6 declining a request to pursue a warning 7 of any kind. I think this is quite 8 specific to these -- to the requested 9 language, and that is my understanding of 10 the Citizen's Petition process.</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. That was what I was going to ask 13 you. 14 What do you base that opinion on 15 that in particular that FDA was not saying in this 16 letter that it's not -- that it doesn't believe 17 any type of warning would be appropriate? 18 A. Because the position process, which, 19 as we've discussed, has delays, gaps, and flaws 20 that are well-recognized and that are immediately 21 evident in the letter that says "Your petitions 22 dated 1994 and 2008 are being addressed in 2014." 23 That already tells you something, you know, about 24 the Citizen's Petition process is, to put it</p> <p>1 Page 376</p> |

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| <p>1 politely, suboptimal.</p> <p>2 The Citizen's Petition process is</p> <p>3 designed to make specific requests of FDA. It's</p> <p>4 not a generic request to do something about a</p> <p>5 potential problem, and so the response to the</p> <p>6 Citizen's Petition is exactly that. It is either</p> <p>7 agreeing or declining to do the action that's</p> <p>8 requested.</p> <p>9 Q. Your authority for that is what?</p> <p>10 A. What I understand from the text of</p> <p>11 the regulations, what I've seen in Citizen's</p> <p>12 Petitions, and what I've read about the Citizen's</p> <p>13 Petitions process including that, again, we're</p> <p>14 just calling it the GAO report.</p> <p>15 Q. And prior to being hired to serve as</p> <p>16 an expert witness in this case, you had never seen</p> <p>17 any company documents of Johnson & Johnson,</p> <p>18 correct?</p> <p>19 A. I certainly had seen no proprietary</p> <p>20 company documents of Johnson & Johnson. I'm sure</p> <p>21 I had seen various documents of Johnson & Johnson</p> <p>22 in, say, the drug and device domain in passing.</p> <p>23 Q. Do you know who Imerys is?</p> <p>24 A. Yes.</p> | <p>1 Q. Had you ever reviewed any</p> <p>2 documents -- internal documents prior to being</p> <p>3 contacted to serve as an expert witness in this</p> <p>4 case from PCPC or CTFA?</p> <p>5 A. No.</p> <p>6 Q. Had you ever heard of PCPC or CTFA</p> <p>7 prior to being contacted by plaintiffs' counsel in</p> <p>8 this case?</p> <p>9 A. In passing, probably, but I haven't</p> <p>10 made a mental note of it. Trade groups,</p> <p>11 particularly trade groups involving health-related</p> <p>12 consumer products, would be within what I would</p> <p>13 read.</p> <p>14 Q. Is there such a mineral as</p> <p>15 asbestos-free talc --</p> <p>16 DR. THOMPSON: Object to form.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. -- in your opinion?</p> <p>19 DR. THOMPSON: Object to form.</p> <p>20 THE WITNESS: I don't have a</p> <p>21 scientific basis for giving an opinion on</p> <p>22 that. I have seen nothing in this matter</p> <p>23 to persuade me that -- that the majority</p> <p>24 or anything approximating all of talc</p> |
| <p>1 Q. Have you seen any documents by</p> <p>2 Imerys prior to being hired to serve as an expert</p> <p>3 in this case?</p> <p>4 A. No.</p> <p>5 Q. Had you done any work prior to being</p> <p>6 hired in this case for any type of mining company?</p> <p>7 A. No.</p> <p>8 Q. Do you have any expertise with</p> <p>9 regard to the obligations of a mining company as</p> <p>10 it relates to talcum powder products?</p> <p>11 A. With respect to --</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 THE WITNESS: -- talcum powder</p> <p>14 products, no. In my legal practice days,</p> <p>15 I wrote the brief in Supreme Court</p> <p>16 litigation involving OSHA obligations,</p> <p>17 which also touched on mine safety</p> <p>18 obligations, and so I have some passing</p> <p>19 acquaintance with mining safety.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. Prior to being contacted to serve as</p> <p>22 an expert witness in this case, had you had any</p> <p>23 dealings with PCPC, also known as CTFA?</p> <p>24 A. No.</p> | <p>1 products are truly asbestos-free.</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. Do you have an opinion one way or</p> <p>4 the other whether you can mine talc that's</p> <p>5 asbestos-free?</p> <p>6 A. I have no --</p> <p>7 DR. THOMPSON: Object to form.</p> <p>8 THE WITNESS: I have no</p> <p>9 opinion on that. I have seen assertions</p> <p>10 of that and I have seen contrary</p> <p>11 positions.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. Do you have an opinion as to the</p> <p>14 amount of exposure -- the minimum amount of</p> <p>15 exposure to asbestos that can cause ovarian</p> <p>16 cancer?</p> <p>17 A. I have relied, as we've discussed,</p> <p>18 on positions and determinations by others that</p> <p>19 there is no safe level of asbestos exposure, and</p> <p>20 insofar as there are paths by which asbestos can</p> <p>21 reach the ovaries, I would apply that same zero</p> <p>22 threshold to ovarian cancer.</p> <p>23 Q. So is it your opinion that a single</p> <p>24 fiber of asbestos is capable of causing ovarian</p> |

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| <p>1 cancer?</p> <p>2 A. I have no reason to think otherwise.</p> <p>3 Q. And with regard to the medical</p> <p>4 literature as it relates to migration of talc or</p> <p>5 asbestos fibers from perineal use of -- of talcum</p> <p>6 powder products, have you done an analysis</p> <p>7 yourself of that medical literature?</p> <p>8 A. I have read some of that literature,</p> <p>9 and my -- my medical view, which is not the expert</p> <p>10 view that I'm, you know, here presenting in terms</p> <p>11 of regulatory design and regulatory obligation, my</p> <p>12 medical -- my medical view is that there are</p> <p>13 demonstrated pathways by which perineal use of</p> <p>14 talc can reach the ovary.</p> <p>15 Q. And that's based on the medical</p> <p>16 literature you reference in your expert report,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. And are you aware of any studies</p> <p>20 that have showed that external application or</p> <p>21 perineal application of any powder or any particle</p> <p>22 has migrated to the tubes and ovaries, in other</p> <p>23 words, where it's been tracked from external</p> <p>24 application to the tubes and ovaries?</p> | <p>Page 382</p> <p>1 THE WITNESS: I would have --</p> <p>2 I would have to go and reread the</p> <p>3 criteria for the classification, but I'll</p> <p>4 accept that characterization.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. Let me go ahead and show you the</p> <p>7 Volume 93 Monograph 2010, and I've only got two</p> <p>8 copies. I'm sorry.</p> <p>9 A. Oh, I have one if it's easier. Do</p> <p>10 you want --</p> <p>11 MR. HEGARTY: You can give</p> <p>12 that to Margaret.</p> <p>13 DR. THOMPSON: I have it.</p> <p>14 MR. HEGARTY: We'll leave it</p> <p>15 there so I don't have to take it back.</p> <p>16 You still have to mark it as an exhibit.</p> <p>17 THE WITNESS: There you go.</p> <p>18 (Document marked for</p> <p>19 identification as Sage Exhibit 20.)</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. And have you reviewed that</p> <p>22 monograph?</p> <p>23 A. Yes.</p> <p>24 Q. And if you look at page 31 of that</p> |
| <p>Page 383</p> <p>1 A. I would have to go back and review</p> <p>2 the studies to see if anything -- if any studies I</p> <p>3 reviewed were designed to illustrate that exactly.</p> <p>4 Q. And you have not done any -- any of</p> <p>5 your own analysis as to whether any bottle of</p> <p>6 Johnson's Baby Powder or Shower to Shower actually</p> <p>7 has -- has ever had asbestos in it, correct?</p> <p>8 A. My own analysis? No.</p> <p>9 Q. Going back to your expert report and</p> <p>10 we'll go back over a few paragraphs.</p> <p>11 A. Sure.</p> <p>12 Q. In paragraph 27, you make reference</p> <p>13 to IARC's monograph with regard to -- IARC's</p> <p>14 monograph in 2010 where it classified the perineal</p> <p>15 use of talc-based body powder (non-asbestiform) as</p> <p>16 Group 2B.</p> <p>17 Do you see that reference?</p> <p>18 A. In paragraph 28?</p> <p>19 Q. 28. I'm sorry. Yes, 28.</p> <p>20 The 2B finding means that chance,</p> <p>21 bias, and confounding cannot be ruled out with</p> <p>22 reasonable certainty, correct?</p> <p>23 MS. PARFITT: Objection to</p> <p>24 form.</p> | <p>Page 385</p> <p>1 monograph, at the very bottom, is it your</p> <p>2 understanding that with regard to a 2B finding,</p> <p>3 that's a finding of limited notice of</p> <p>4 carcinogenicity?</p> <p>5 A. I'm sorry. I'm looking for the</p> <p>6 correlation between the description and the -- and</p> <p>7 the classification of the category.</p> <p>8 Q. Well, do you understand one way or</p> <p>9 another?</p> <p>10 A. But I'm -- but if -- so, yes. "A</p> <p>11 positive association has been observed, but</p> <p>12 chance, bias, or confounding could not be ruled</p> <p>13 out." Absolutely.</p> <p>14 And I would -- and I would, again,</p> <p>15 point out that -- that a 2B finding alone -- and</p> <p>16 this is, you know, for platy talc -- would be</p> <p>17 exactly the sort of information that's</p> <p>18 contemplated by the regulation to support a</p> <p>19 revisiting of substantiation and trigger a "safety</p> <p>20 not determined" notice.</p> <p>21 And I should have -- in what you</p> <p>22 pointed me to -- I'm sorry and I hope that's not a</p> <p>23 problem.</p> <p>24 Q. No, go ahead.</p> |

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| <p>1 A. "A positive association has been 2 observed for which a causal interpretation is 3 considered by the working group to be credible," 4 and then it goes with the limitation language that 5 you quoted.</p> <p>6 Q. Is it your opinion that a single 7 epidemiologic study finding association between a 8 cosmetic and an illness is enough to consider that 9 cosmetic not proved safe?</p> <p>10 DR. THOMPSON: Object to form.</p> <p>11 THE WITNESS: It would depend 12 on the study, but conceptually, yes.</p> <p>13 BY MR. HEGARTY:</p> <p>14 Q. Can you cite for me any published 15 standard for assessing the safety of a cosmetic?</p> <p>16 DR. THOMPSON: Object to form.</p> <p>17 THE WITNESS: I have seen CIR 18 material about their various 19 classifications. I have also seen Health 20 Canada report. I've also seen references 21 to other types of safety standards in 22 many of the materials that we've 23 discussed today.</p> <p>24 BY MR. HEGARTY:</p> | <p>1 referenced in that article?</p> <p>2 A. I can't -- I can't recall. Probably 3 not.</p> <p>4 Q. Do you know whether certain forms of 5 asbestos come in asbestos and non-asbestos forms?</p> <p>6 A. I --</p> <p>7 DR. THOMPSON: Object to form.</p> <p>8 THE WITNESS: I know that to 9 be the case in some of the material that 10 I have reviewed in terms of how the 11 fibers and crystals are structured.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. If you look at paragraph 50 of your 14 report, your footnote 15, you include footnote 15. 15 You make a statement, though, in that paragraph 16 that said:</p> <p>17 "Asbestos was known to cause lung 18 cancer since the 1930s and was suspected to cause 19 ovarian cancer since the 1960s."</p> <p>20 And my question is: What do you 21 cite as your authority for saying that asbestos 22 was suspected to cause ovarian cancer since the 23 1960s?</p> <p>24 And, again, you refer only there to</p> |
| <p>1 Q. Okay. Other than the CIR and Health 2 Canada, can you cite for me any published 3 standards on assessing the safety of a cosmetic?</p> <p>4 A. No.</p> <p>5 Q. If you look over at paragraph 47 of 6 your report --</p> <p>7 A. Yes.</p> <p>8 Q. -- you cite in footnote 10 a number 9 of studies.</p> <p>10 Do you know whether any of those 11 studies tested Johnson's Baby Powder?</p> <p>12 A. I would have to go back and look. I 13 do not know.</p> <p>14 Oh, wait a second. In the -- in the 15 "Blunt" or Blount reference here, the quote is 16 then enhanced with confirmed that the tested -- 17 the tested sample was, in fact, Johnson's Baby 18 Powder.</p> <p>19 Q. As to Dr. Blount, did you read her 20 deposition in this litigation?</p> <p>21 A. I -- I believe I received it.</p> <p>22 Again, it's not one that I read in -- in full.</p> <p>23 Q. Did you read what she had to say 24 about the particular sample that she tested as</p> | <p>1 footnote 15, which is the 30(b)(6) deposition and 2 exhibits of John Hopkins and Exhibit 28.</p> <p>3 A. So I'm right now looking at the 4 appendix in my report that was the summary of 5 scientific evidence to see if one of those pieces 6 specifically supports that statement.</p> <p>7 (Reviews document.)</p> <p>8 None of these of the published 9 articles date to the 1960s, but the Henderson 1971 10 article talks about the possibility of an 11 association of talc and asbestos and the 12 possibility of relationship between those and 13 carcinoma changes in the ovary.</p> <p>14 I think that is sufficient support 15 for concerns going back to the 1960s if it's a 16 1971 publication.</p> <p>17 Q. You have reviewed the epidemiologic 18 literature -- some of the epidemiologic literature 19 looking at talcum powder use and ovarian cancer, 20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. That literature shows -- or strike 23 that.</p> <p>24 Some of that literature reports the</p> |

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| <p>1 relative risk in the range of 1.2 to 1.3; is that 2 right? 3 A. Yes. 4 Q. And such a relative risk in that 5 range is a weak relative risk, correct? 6 DR. THOMPSON: Object to form. 7 THE WITNESS: No. No. It 8 indicates for a serious disease that with 9 confidence intervals that fall between 10 1.2 and 1.3, a serious disease with a 11 substantial prevalence, even if not 12 incredibly common across the population, 13 that's a serious risk. 14 BY MR. HEGARTY: 15 Q. Well, that's not exactly what you 16 said before, and I'll show you the context. 17 I marked as Exhibit No. 21 an 18 article of yours entitled "Lessons From Breast 19 Implant Litigation." 20 (Document marked for 21 identification as Sage Exhibit 21.) 22 BY MR. HEGARTY: 23 Q. Do you recall this article? 24 A. That's a book review.</p> | <p>Page 390</p> <p>1 A. Well, just reading this paragraph, I 2 published this book review one year into my 3 teaching career in 1996 based on someone else's 4 book about breast implant litigation. 5 I could quote other parts from this 6 book review that I actually remember, which was 7 that the author of this book expected to think 8 that the plaintiffs' lawyers were the villains in 9 this situation and actually found her villains 10 elsewhere. 11 But in terms of these particular 12 statistics, all I can say is, as I reported them 13 in the book review, I talked about wide confidence 14 intervals. And I talked about one study where I 15 talk about the upper bound of the confidence 16 interval, but don't give the lower bound. 17 So perhaps I said that then. 18 Perhaps I would still agree. Perhaps I wouldn't. 19 Q. Aren't you saying there, though, 20 that your take is that with regard to the study 21 described there that the link to the disease is 22 possible, but unlikely, and at any rate cannot be 23 substantial? 24 DR. THOMPSON: Object to form.</p> |
| <p>Page 391</p> <p>1 Q. Book review. Okay. 2 If you look over at the second page 3 of that document, that book review, the paragraph 4 on the left-hand side where we say "What do we 5 know in 1996?" Do you see that paragraph? 6 A. Yes. 7 Q. You note in that paragraph towards 8 the bottom that: 9 "The most recent and largest study 10 calculated a relative of risk of 1.24 for 11 self-reported disease and established with 95 12 percent confidence an upper bound of 1.41. In 13 other words, a causal effect between breast 14 implants and connective tissue disease is 15 possible, but unlikely, and at any rate cannot be 16 substantial." 17 Correct? 18 A. That's what I say here, interpreting 19 the information in Angell's book at the time. 20 Q. And you're saying there that a study 21 that reports a relative risk of 1.24, while it 22 indicates a disease is possible, you're saying 23 it's unlikely, at any rate cannot be substantial, 24 correct?</p> | <p>Page 391</p> <p>1 THE WITNESS: Possible -- 2 well, again, it's a -- it's a (laugh) 3 book review of someone else's book where 4 my points in the book review are not 5 predominantly epidemiologic. 6 But I say what I say, and in 7 this instance, we know that at least two 8 studies that are -- that I refer to in 9 this paragraph have wide confidence 10 intervals and the third is whatever I say 11 it is. 12 And I draw some inference, 13 which, as I just said, if I were to go 14 back and revisit the data and revisit 15 these studies, I might or might not write 16 it the same way today. 17 BY MR. HEGARTY: 18 Q. But the words that I read to you are 19 your words. It's not quoted from the book you 20 reviewed, right? 21 A. Correct. 22 Q. This is your take on the book that 23 you reviewed, right? 24 A. It is a small piece of a book review</p> |

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| <p>1 essay that is mainly about other topics. 2 MR. HEGARTY: You mentioned or 3 we talked earlier in the deposition about 4 the O'Brien study. I'll mark that study 5 as Exhibit No. 22. 6 (Document marked for 7 identification as Sage Exhibit 22.) 8 BY MR. HEGARTY: 9 Q. Do you in your report anywhere 10 reference this study? 11 A. I don't reference it directly. It's 12 an analysis of pooled data. I spent a fair amount 13 of time reading this when I was evaluating the 14 science and -- and the case. 15 Q. You don't even cite this article in 16 your reference materials, though, do you? 17 A. I'd have to look. If I don't, I 18 don't. 19 Q. Do you want to look? 20 A. I did -- well. 21 (Reviews document.) 22 Apparently, I don't. 23 Q. You do cite -- 24 A. I should have. My apologies.</p> | <p>Page 394</p> <p>1 stated. 2 I just come back to the point we've 3 discussed at several junctures, though we're now 4 sort of doing skip-around questioning, which is, 5 I'm not offering a scientific expert opinion on 6 causation. 7 Q. Did you do any sort of analysis 8 weighing the strengths and weaknesses of the 9 O'Brien study? 10 DR. THOMPSON: Object. Form. 11 THE WITNESS: I read the 12 study. I mean, again, it's -- it's a 13 pooled sample study to go back, you know, 14 and it's based on cohort studies that 15 have their own characteristics and have 16 their own weaknesses. 17 It is a peer-reviewed article. 18 It was worth my attention, and it should 19 have been noticed to you as among the 20 material I considered. 21 Beyond that, you'd have to ask 22 other questions. 23 BY MR. HEGARTY: 24 Q. If you look at paragraph 71 of your</p> |
| <p>1 Q. I was going to say: You cite a 2 number of other epidemiologic studies in your list 3 of materials, correct? 4 A. Yes. 5 Q. Certainly an article from 2020 from 6 JAMA is an article that should be referenced as 7 you would reference other articles of an 8 epidemiologic nature that you included in your 9 materials, correct? 10 DR. THOMPSON: Object to form. 11 THE WITNESS: I -- I agree 12 this is an article that would be worth 13 referencing as material considered. 14 BY MR. HEGARTY: 15 Q. And why did you not reference it? 16 DR. THOMPSON: Object to form. 17 THE WITNESS: I can't answer 18 that. Might be an oversight. Might just 19 be -- I don't have an answer for that. I 20 do -- I do -- I do recall reading -- 21 reading this but -- 22 BY MR. HEGARTY: 23 Q. Do you -- I'm sorry. 24 A. -- but the conclusions are as</p> | <p>Page 395</p> <p>1 report, you make the statement in that paragraph 2 that "studies of cosmetics are infrequent and 3 poorly funded compared to drugs." 4 What's your authority for that 5 statement? 6 A. It's consistent with everything I've 7 read in reviews of cosmetic regulation and, 8 frankly, it's derivative of extensive expertise 9 with the drug regulatory regime, which requires 10 studies and the cost of which are constant matters 11 of public comment. 12 Q. Do you have an opinion as to -- wait 13 a minute. Strike that. 14 Is it your opinion that Johnson's 15 Baby Powder in 2019 should have carried a warning 16 about the risk of ovarian cancer? 17 MS. PARFITT: Objection. 18 DR. THOMPSON: Object to form. 19 THE WITNESS: It is my 20 opinion that in 2019 and many years 21 before that Johnson & Johnson had a legal 22 obligation to disclose that safety had 23 not been determined. 24 It is my opinion that with</p> |

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| <p>1 respect to warnings, instructions, or 2 other mitigation options, such as 3 reformulation or withdrawal, Johnson & 4 Johnson had to do something.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. And do you have an opinion as to 7 what information should have been included on the 8 package for consumers as it relates to the 9 analysis that you have done in this case?</p> <p>10 In other words, do you have specific 11 language that you believe should have been 12 included on Johnson & Johnson's packaging for its 13 Johnson's Baby Powder and Shower to Shower 14 products?</p> <p>15 MS. PARFITT: Object to form.</p> <p>16 THE WITNESS: I believe the 17 740.10 language should have been 18 included. I think that was a direct 19 regulatory obligation.</p> <p>20 I think other language should 21 have been offered by Johnson & Johnson to 22 better inform consumers about -- about 23 possibilities of harm, in other words, 24 about risk, about ways to mitigate that</p> | <p>Page 398</p> <p>1 things that Johnson & Johnson could have and -- 2 could have done, and I would have applauded any of 3 them.</p> <p>4 I think it's worth pointing out that 5 seriously studying the problem in ways that they 6 did not study the problem would have been a good 7 start, but as for the rest of the mitigation 8 measures ranging from disclosure to warning to 9 instruction to reformulation to withdrawal, that 10 was up to your client.</p> <p>11 Q. What are you relying on for saying 12 that Johnson & Johnson did not seriously study its 13 talcum powder products?</p> <p>14 A. A lot of this came out of the Wille 15 testimony, but a lot of it also came out of the 16 history of the different studies, and the fact 17 that beyond those early studies of surgical 18 gloves, I was not made aware of any serious 19 research contributions that Johnson & Johnson had 20 made.</p> <p>21 Q. When you say you were not made aware 22 of, that's -- you're referring to materials that 23 you have reviewed, correct?</p> <p>24 A. Yes.</p> |
| <p>Page 399</p> <p>1 risk in terms of Instructions for Use or 2 nonuse.</p> <p>3 But I wasn't asked to create 4 language for your client, and I think the 5 major lesson is that many things that 6 your client could have done would satisfy 7 me, but doing nothing does not satisfy 8 me.</p> <p>9 BY MR. HEGARTY:</p> <p>10 Q. I was going to ask. My next 11 question is: Do you have an opinion as to what 12 specific language should have been included on 13 Johnson's Baby Powder and Shower to Shower during 14 the time it was being sold in the United States 15 and Canada?</p> <p>16 MS. PARFITT: Objection.</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: No.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. And do you have an opinion as to 21 what specific mitigation activities Johnson & 22 Johnson should have initiated with regard to its 23 talcum powder products?</p> <p>24 A. Again, there are a wide range of</p> | <p>Page 401</p> <p>1 Q. If you look at paragraph 80 of your 2 report -- I'm sorry. Let's not -- let's not go 3 there yet. I think I skipped over a couple 4 points.</p> <p>5 My methodology is to take the tabs 6 off the bottom of my notes.</p> <p>7 (Laugh).</p> <p>8 MR. TISI: Where was it 9 published?</p> <p>10 MR. HEGARTY: It's not been 11 published.</p> <p>12 MR. TISI: Well, then strike 13 you.</p> <p>14 MR. HEGARTY: It's not 15 reliable.</p> <p>16 THE WITNESS: My methodology 17 is, I need a little more Diet Coke.</p> <p>18 MR. HEGARTY: I realize at 19 times when I finish a deposition and I 20 figure out that I did miss things to ask.</p> <p>21 BY MR. HEGARTY:</p> <p>22 Q. So if you look at paragraph 70 of 23 your expert report.</p> <p>24 A. Yes.</p> |

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| <p>Page 402</p> <p>1 Q. I think we've established that you 2 have not read all of the expert reports provided 3 by the Johnson & Johnson defendants in this 4 litigation?</p> <p>5 A. Yes.</p> <p>6 Q. And particularly you have not read 7 the reports of Johnson & Johnson experts where 8 they say that talcum powder use is safe, correct?</p> <p>9 MS. PARFITT: Objection to 10 form.</p> <p>11 THE WITNESS: I have read 12 some testimony regarding their assertions 13 that talcum powder is safe. I have seen 14 perhaps an expert report, but nothing 15 immediately springs to mind.</p> <p>16 It has been the company's 17 consistent position essentially since 18 time immemorial, which is to me a big 19 part of the problem here.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. And with regard to Johnson & 22 Johnson's experts who have -- who testified and 23 prepared reports saying that talcum powder is 24 safe, is it your contention that they are not</p> | <p>Page 404</p> <p>1 A. I do.</p> <p>2 Q. And are you in that paragraph 3 referencing the long latency between talcum powder 4 use and the development of ovarian cancer, or 5 something else?</p> <p>6 A. Essentially -- essentially that, but 7 I've spent a fair amount of teaching time studying 8 and teaching occupational safety and health 9 examples that distinguish between workplace 10 accidents and workplace diseases, and long 11 latencies for studying those types of association 12 are frequently an obstacle to defend epidemiology, 13 and many of those cases involve cancer.</p> <p>14 Q. Do you have an opinion in this case 15 as far as the latency between talcum powder use 16 and ovarian cancer development?</p> <p>17 A. No.</p> <p>18 Q. Do you have any opinion as to the 19 minimum talcum powder use that is -- that is 20 required to increase -- that will increase the 21 risk of ovarian cancer?</p> <p>22 A. No.</p> <p>23 DR. THOMPSON: Object to form.</p> <p>24 BY MR. HEGARTY:</p> |
| <p>Page 403</p> <p>1 being truthful in making those statements?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: Could you ask 4 that perhaps a slightly different way?</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. Sure.</p> <p>7 To the extent an expert for Johnson 8 & Johnson said in their report or their testimony 9 that talcum powder use is safe, is it your 10 contention that they're not being truthful in 11 making those statements?</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 BY MR. HEGARTY:</p> <p>14 Q. In making that statement?</p> <p>15 A. I simply view it as their expressed 16 opinion.</p> <p>17 Q. Which you are doing here today 18 yourself, correct?</p> <p>19 A. Indeed.</p> <p>20 Q. Now we can turn over to paragraph 80 21 of your report.</p> <p>22 You reference in that paragraph what 23 you call "long latency for carcinogenesis."</p> <p>24 Do you see that?</p> | <p>Page 405</p> <p>1 Q. In your opinion, though, based on 2 this paragraph, it is impossible to substantiate 3 the safety of talc, correct?</p> <p>4 DR. THOMPSON: Object to form.</p> <p>5 THE WITNESS: Could I ask you 6 to repeat that question?</p> <p>7 BY MR. HEGARTY:</p> <p>8 Q. Sure.</p> <p>9 Based on the statements you're 10 making about the -- well, you actually say that 11 expeditious -- let me start over again.</p> <p>12 A. Ah. Now I know.</p> <p>13 Q. "Expedited and definitive studies 14 to determine safety are impossible given long 15 latency for carcinogenesis and other research 16 challenges."</p> <p>17 So aren't you saying there that it 18 is impossible to substantiate the safety of talc 19 because of the latency period?</p> <p>20 DR. THOMPSON: Object to form.</p> <p>21 THE WITNESS: I'm not saying 22 that. From an ex ante position, all of 23 this is possible, as it would be for any cosmetic ingredient or cosmetic product.</p> |

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| <p>1 That paragraph that you 2 referenced is the continuation of the 3 paragraph above, which is explaining why 4 this situation does not under any 5 circumstances fall within the exception 6 of the regulation provides to the 7 obligation to provide the "safety not 8 determined" warning.</p> <p>9 BY MR. HEGARTY:</p> <p>10 Q. But you mention that you have taught 11 with regard to latency in cancer.</p> <p>12 Is it your testimony that with a 13 possible -- well, let me back up.</p> <p>14 You agree that latency as it relates 15 to exposure and a disease assumes that the 16 exposure causes the disease, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And in your opinion, how do you 19 substantiate the safety of a product with the 20 possibility of a long latency period?</p> <p>21 DR. THOMPSON: Object to form.</p> <p>22 THE WITNESS: There is always 23 the possibility of a long latency period.</p> <p>24 We could pick any cosmetic,</p> | <p>1 Q. You say in the first paragraph: 2 "As stated previously beginning in 3 the 1960s" -- I'm sorry. You state in the first 4 sentence: 5 "As stated previously, beginning in 6 the 1960s, the scientific literature presented 7 evidence of talcum powder containing asbestos and 8 fiber talc -- fibrous talc."</p> <p>9 You go on to say: 10 "Johnson & Johnson testing results 11 and internal discussions also demonstrate the 12 presence of and concern about the presence of 13 asbestos in talc fibers."</p> <p>14 Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. What documents have you reviewed 17 that show internal discussions within Johnson & 18 Johnson that demonstrate the presence of and 19 concern about the presence of asbestos and talc 20 fibers?</p> <p>21 A. The presence of that exhibit that we 22 discussed earlier that had the Hopkins assessments 23 of the various prior testing that Johnson & 24 Johnson had done. In terms of concern about the</p> |
| <p>1 Page 407</p> <p>1 call it X, and any latent disease, call 2 it Y, and at the moment you begin to sell 3 the product, you do what you can to 4 substantiate the safety of the product, 5 and you do not observe the disease while 6 occurring and you regard having done 7 something to the product that 8 substantiated safe.</p> <p>9 But as information surfaces, 10 as it has in abundance with respect to 11 talcum powder exposure and ovarian 12 cancer, that calls into question your 13 prior substantiation determination and 14 that's when you have the obligation to 15 disclose.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. So it's not your testimony then 18 before a cosmetic manufacturer can sell a product, 19 they have to weigh -- they have to test it for 10, 20 20, 30, 40 years?</p> <p>21 A. Certainly not.</p> <p>22 Q. If you could look at paragraph 112 23 of your expert report.</p> <p>24 A. Yes.</p> | <p>1 Page 409</p> <p>1 presence, I did early in my engagement review some 2 internal corporate documents that I read as 3 expressing concern.</p> <p>4 Q. Do you cite any of those corporate 5 documents in the body of your report?</p> <p>6 A. No.</p> <p>7 Q. If we turn over to paragraph 121 of 8 your report, you say in that paragraph: 9 "In sum, Johnson & Johnson 10 manipulated asbestos testing and associated 11 publicity so that 'none detectable' would be 12 interpreted as 'none.'"</p> <p>13 What associated publicity are you 14 referring to in that paragraph?</p> <p>15 A. I'm -- I'm referring to things that 16 such as the Facts About Talc website, admittedly 17 not a comprehensive overview. But in addition the 18 Koberna deposition testimony regarding marketing 19 activities, you know, included marketing efforts 20 that -- that certainly did not refer to the 21 possibility of adulteration of asbestos.</p> <p>22 Q. And whose deposition did you just 23 mention?</p> <p>24 A. Koberna.</p> |

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| <p>1 Q. Can you show me that in your 2 reliance materials, the exhibit we've been looking 3 at?</p> <p>4 A. I believe the deposition was 5 subsequent to the submission of the report.</p> <p>6 So -- so perhaps I guess the more 7 accurate way to give my answer is, I didn't 8 consider it in drafting the report, but it was 9 subsequently made available to me.</p> <p>10 Q. And how do you spell the name that 11 you're referring to?</p> <p>12 A. I think it's K-o-b-e-r-n-a. It was 13 an uncompleted deposition and, frankly, I found it 14 incredibly interesting given my mom's career in 15 advertising.</p> <p>16 MR. HEGARTY: I'm going to 17 mark as Exhibit 23 a folder of 18 supplemental materials that we were 19 provided by counsel for the plaintiffs in 20 this case.</p> <p>21 (Document marked for 22 identification as Sage Exhibit 23.)</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. And it's just a printout of the page</p> | <p>Page 410</p> <p>1 are you able to identify -- let me back up. 2 Have you received additional 3 materials from plaintiffs' counsel since you 4 signed your report on July 2, 2021?</p> <p>5 A. I said before that I had, and I 6 repeat that answer.</p> <p>7 Q. You identified some of those. 8 But do you know whether all of the 9 materials you received since July 2, 2021 are in 10 this Exhibit 23?</p> <p>11 A. I have worked with counsel as best 12 we could to make sure that anything that I saw 13 subsequently was properly cataloged and properly 14 shared with your client.</p> <p>15 Q. But do you -- are you able to recall 16 anything else that you have reviewed since you 17 signed your expert report on July 2, 2021, besides 18 what you've already provided to us -- to me in 19 this deposition?</p> <p>20 A. Right now, no.</p> <p>21 Q. Is there anything else that stands 22 out to you?</p> <p>23 You mentioned that -- you mentioned 24 some things. You mentioned the Koberna</p> |
| <p>1 in the matter that they provided to us in a 2 Dropbox. When you pull up the particular heading 3 for the supplemental materials, this is what you 4 can print out.</p> <p>5 Do you understand that?</p> <p>6 A. Yes.</p> <p>7 Q. And do you recall after the initial 8 supplying of materials to you whether there were 9 supplemental materials provided to you at a later 10 date?</p> <p>11 A. As I said at some point earlier 12 today, I've continued to -- to research the basis 13 for the opinions that I have given, and I've 14 continued to ask questions again about both sides 15 of the issue.</p> <p>16 And one of the areas that I do not 17 feel I had sufficiently explored for the original 18 report were marketing activities because there was 19 not a lot of content I could review for that, and 20 this was a subsequent deposition. And so when it 21 came along, I was very pleased to receive it and 22 to read it in full.</p> <p>23 It should have been provided to you.</p> <p>24 Q. What materials have you received or</p> | <p>Page 411</p> <p>1 deposition.</p> <p>2 Anything else you recall -- well, 3 let me ask it this way.</p> <p>4 Is there anything else you are 5 relying on or using as a resource material for 6 purposes of what you testified here today that you 7 have received since signing your July 2, 2021 8 expert report?</p> <p>9 A. Everything that I have considered is 10 something that I have discussed with plaintiffs' 11 counsel in order so that that could be properly 12 listed and shared as required. I don't know more 13 than that.</p> <p>14 Q. Is there anything that you know of 15 sitting here today that you rely upon or you 16 considered since your July 2, 2021 report was 17 signed that you know we have not talked about 18 today, that you have not referenced or I have not 19 asked about?</p> <p>20 A. Certainly -- certainly anything that 21 -- that I can think of and that was significant 22 enough that it matters to me sitting here is 23 something that you've seen or received.</p> <p>24 Q. We talked about the CIR and are you</p> |

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| <p>1 aware that the -- or is it --</p> <p>2 Do you have any opinion with regard</p> <p>3 to the way that CIR is funded, that is, that you</p> <p>4 find to be part of your opinions as it relates to</p> <p>5 the CIR review for talc and ovarian cancer -- I'm</p> <p>6 sorry -- talc and the safety of talc?</p> <p>7 MS. PARFITT: Objection.</p> <p>8 Form.</p> <p>9 THE WITNESS: I do not</p> <p>10 currently recall the details of the CIR</p> <p>11 funding support. The generally close</p> <p>12 connection between the CIR, the trade</p> <p>13 association, and the trade association's</p> <p>14 members is concerning to me, as it was</p> <p>15 concerning to FDA in that 1998 internal</p> <p>16 review.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. You looked at the -- the document</p> <p>19 setting out the CIR analysis by Fiume, correct?</p> <p>20 A. If you could provide it, I would</p> <p>21 appreciate it.</p> <p>22 MR. HEGARTY: I do have it.</p> <p>23 I'll mark as Exhibit No. 24</p> <p>24 the Fiume article.</p> | <p>Page 414</p> <p>1 similar underlying data and reached rather</p> <p>2 different conclusions. And I set forth in that</p> <p>3 comparison a number of areas of concern, but the</p> <p>4 detail that exists in my Appendix 2 is not detail</p> <p>5 that I could reproduce for you right now.</p> <p>6 Q. And is it your -- did you read the</p> <p>7 entirety of the CIR safety assessment of talc as</p> <p>8 used in cosmetics?</p> <p>9 A. I read as much of it as I was</p> <p>10 capable of reading at the time. (Laugh).</p> <p>11 Q. And understand and understood.</p> <p>12 But my question is: Did you read</p> <p>13 the entirety of it?</p> <p>14 A. I made a point of reading it,</p> <p>15 seriously.</p> <p>16 Q. Oh, did you read every page, every</p> <p>17 word on every page?</p> <p>18 A. No.</p> <p>19 Q. Did you read every word of every</p> <p>20 page of the Health Canada safety assessment?</p> <p>21 A. No, but both of these are -- are</p> <p>22 materials that I considered highly relevant and</p> <p>23 important to my assessment and opinions, and I</p> <p>24 engaged seriously with both of them.</p> |
| <p>1 (Document marked for</p> <p>2 identification as Sage Exhibit 24.)</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. Do you recall reading that article?</p> <p>5 A. (Reviews document.)</p> <p>6 Yes.</p> <p>7 Q. Do you know any of the individuals</p> <p>8 whose names are listed at the top of that exhibit?</p> <p>9 A. No.</p> <p>10 Q. Do you have any criticism of the</p> <p>11 capabilities of any of the individuals listed at</p> <p>12 the top of that article?</p> <p>13 MS. PARFITT: Objection to</p> <p>14 form.</p> <p>15 THE WITNESS: I wouldn't have</p> <p>16 a basis for criticism.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. Is it your opinion that the CIR</p> <p>19 panel did not do a proper analysis as reflected or</p> <p>20 as set out in this -- this document?</p> <p>21 A. So the way I would answer that</p> <p>22 question would be to reference Appendix 2 in my</p> <p>23 report, which is a specific comparison of the CIR</p> <p>24 and Health Canada assessments, because they took</p> | <p>Page 415</p> <p>1 Q. And if you look over Appendix 1 of</p> <p>2 your report, which is "Summary of scientific</p> <p>3 evidence relating to talcum powder and its</p> <p>4 association with ovarian cancer"?</p> <p>5 A. Yes.</p> <p>6 Q. There's a section there where you</p> <p>7 talk about some studies dealing with migration of</p> <p>8 particles from the vagina to the ovaries.</p> <p>9 Do you see that section paragraph 7?</p> <p>10 A. Yes.</p> <p>11 Q. Before this, before being hired to</p> <p>12 serve as an expert witness in this case, had you</p> <p>13 ever in any of your work looked at articles</p> <p>14 regarding the migration of particles within</p> <p>15 tissue?</p> <p>16 A. Certainly, but I couldn't specify</p> <p>17 which. My father back in the 1950s did studies of</p> <p>18 lymphatic spread using colloidal gold particles.</p> <p>19 Q. Well, I wasn't asking about what</p> <p>20 your father did.</p> <p>21 I asked you if you had any</p> <p>22 experience in looking at the migration of</p> <p>23 particles within the body prior to being hired as</p> <p>24 an expert in this case.</p> |

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| <p>1 A. In connection with my -- my medical 2 education and my medical interests, from time to 3 time. I'm sorry.</p> <p>4 Q. And had you reviewed any of the 5 studies that you cite in this part of your report 6 prior to being -- that is, in paragraph 7 -- prior 7 to being contacted to serve as an expert witness 8 in this case?</p> <p>9 A. No.</p> <p>10 Q. You had -- we had designated as 11 Exhibit No. 11 the notebook of materials that you 12 have in front of you?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall that?</p> <p>15 I want to go ahead and designate as 16 Exhibit No. 25 the loose materials that you have 17 brought with you.</p> <p>18 A. Okay.</p> <p>19 (Document marked for 20 identification as Sage Exhibit 25.)</p> <p>21 BY MR. HEGARTY:</p> <p>22 Q. So would you keep that together --</p> <p>23 A. Yes.</p> <p>24 Q. -- as a separate set of documents?</p> | <p>Page 418</p> <p>1 A. Sure. This is without the loose 2 materials, right?</p> <p>3 Q. Correct. (Reviews documents.)</p> <p>5 The underlining in the notes that 6 are in your report, are those or those are from 7 you, correct?</p> <p>8 A. In the report, in the tab containing 9 the report, yes. The dots on the CV are also from 10 me.</p> <p>11 Q. And when did you make these notes 12 and these underlining in relation to the 13 deposition?</p> <p>14 A. Roughly -- well, since we 15 rescheduled, it would have been, roughly, a week 16 before the original scheduled date.</p> <p>17 Q. And I'm almost finished. (Reviews document.)</p> <p>19 I'll give that back to you.</p> <p>20 And can you hand me the loose 21 materials that we designated as Exhibit No. 25?</p> <p>22 A. Yes. Here. My report is in --</p> <p>23 Q. Yeah.</p> <p>24 A. -- a couple of these.</p> |
| <p>Page 419</p> <p>1 A. Yes. I'm trying -- I'm trying to 2 keep it separate from.</p> <p>3 Q. Keep it separate from the exhibits 4 that --</p> <p>5 A. Yeah. I think we're okay on that. 6 I'll do my -- I do my -- I don't think anything 7 has got mixed up yet but...</p> <p>8 Q. Well, anything that you have over 9 there should be marked as an exhibit sticker. I 10 want to make sure that you have anything --</p> <p>11 A. Right.</p> <p>12 Q. -- that you brought with you loose 13 that was not marked as an exhibit --</p> <p>14 A. Correct.</p> <p>15 Q. -- we'll designate as Exhibit 16 No. 25.</p> <p>17 A. Certainly.</p> <p>18 Q. And with regard to the loose 19 materials and the notebook, are those all the 20 materials that you brought with you to the 21 deposition?</p> <p>22 A. Yes.</p> <p>23 Q. And can I look just for a second at 24 your notebook?</p> | <p>Page 421</p> <p>1 Q. A couple of exhibits are there.</p> <p>2 A. I think this --</p> <p>3 Q. Looks like more than a couple.</p> <p>4 A. Yeah, I think it's that.</p> <p>5 Q. And with regard to the FDA's 6 cosmetic program that you've been talking about, 7 was this a document that plaintiffs' counsel 8 provided to you?</p> <p>9 A. Yes.</p> <p>10 Q. This is actually an exhibit, too.</p> <p>11 A. Oh, sorry.</p> <p>12 Q. So is that. And that.</p> <p>13 A. Yeah, this was an exhibit, also.</p> <p>14 Q. And I believe those are all the 15 questions I have. Thank you, Doctor.</p> <p>16 A. My pleasure. (Discussion off the record)</p> <p>18 DR. THOMPSON: I have a few 19 questions, but before that a 20 housekeeping. I believe you have the 21 supplemental reliance list.</p> <p>22 MR. HEGARTY: You thought you 23 had sent us a list?</p> <p>24 MS. PARFITT: Right because</p> |

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| <p>1 the NCI article that you talked about 2 earlier, the Koberna, all of that, that's 3 all on there. That, hopefully, will 4 clarify. That may have happened when, 5 you know, the first deposition was 6 scheduled and then maybe...</p> <p>7 MR. HEGARTY: I did get last 8 night a couple of articles by e-mail.</p> <p>9 MR. TISI: That was different. 10 That was different.</p> <p>11 MR. HEGARTY: That was 12 different.</p> <p>13 DR. THOMPSON: No. This was 14 done -- this was done --</p> <p>15 MR. TISI: This was done 16 before.</p> <p>17 DR. THOMPSON: -- prior to the 18 first scheduled deposition.</p> <p>19 MR. HEGARTY: I don't remember 20 seeing it. I'm not saying that you did 21 not send it.</p> <p>22 MS. PARFITT: Yeah.</p> <p>23 MR. HEGARTY: But I don't 24 remember seeing it.</p> | <p>Page 422</p> <p>1 Q. And I'm going to show you this 2 exhibit, Dr. Sage, and would you look at that and 3 whether you've ever seen that exhibit before right 4 now?</p> <p>5 A. The actual -- this actual exhibit I 6 don't -- I don't recall, but it may be in my 7 materials.</p> <p>8 Q. Would you look at those listing of 9 materials and tell me whether you reviewed all of 10 them, some of them, none of them?</p> <p>11 A. (Reviews document.)</p> <p>12 Several of them look familiar.</p> <p>13 Several of them are things that I have read all or 14 parts of. Certainly these deposition transcripts 15 were made available to me. The Koberna one was 16 the one I spent the most time with, and then a lot 17 of the ones regarding more recent reform proposals 18 and the like I've engaged with extensively.</p> <p>19 Q. Do you recall when it was in 20 relation to your expert report when you received 21 these additional materials?</p> <p>22 A. It was sporadically after that. It 23 wasn't as a batch.</p> <p>24 Q. Have you received any additional</p> |
| <p>Page 423</p> <p>1 Is it okay I mark it as an 2 exhibit?</p> <p>3 DR. THOMPSON: Yes.</p> <p>4 MR. HEGARTY: Is it okay if I 5 ask the doctor a couple questions about 6 it when you're done? Or I can do it 7 right now.</p> <p>8 DR. THOMPSON: No. You can go 9 ahead do it.</p> <p>10 MR. HEGARTY: I can do it 11 right now.</p> <p>12 DR. THOMPSON: That was in his 13 notebook also but that's a separate copy.</p> <p>14 MR. HEGARTY: Okay. Yeah. It 15 would be helpful if I could just clean 16 that and make a record of it.</p> <p>17 (Discussion off the record).</p> <p>18 MR. HEGARTY: So I'm marking 19 as Exhibit No. 26 the list of materials 20 that Dr. Thompson provided to me that she 21 indicated had been provided to us before.</p> <p>22 (Document marked for 23 identification as Sage Exhibit 26.)</p> <p>24 BY MR. HEGARTY:</p> | <p>Page 425</p> <p>1 materials from plaintiffs' counsel since or in the 2 last two weeks?</p> <p>3 A. Not that I recall.</p> <p>4 MR. TISI: Although we did 5 send you stuff last night, right?</p> <p>6 BY MR. HEGARTY:</p> <p>7 Q. You mentioned that you had read some 8 of the transcript of Koberna.</p> <p>9 Did you read the trial transcripts 10 of the Cadagin case that are referenced here?</p> <p>11 A. They were sent to me. I don't 12 believe I read them.</p> <p>13 Q. And did you ask for any of these 14 materials?</p> <p>15 A. I asked for a lot of these 16 materials, not by name, but I asked for -- I asked 17 for the Koberna materials and anything else 18 related to marketing. I asked for a lot of the 19 reform efforts. And I asked for, you know, 20 updated scientific literature. This was, I'm 21 sure, provided in due course because of that 22 request.</p> <p>23 Q. Did you read all the scientific 24 literature that's referenced in this exhibit?</p> |

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| <p>1 A. Not -- not all of it.</p> <p>2 Q. In looking at these articles, can</p> <p>3 you tell me which of these you did read?</p> <p>4 A. (Reviews document.)</p> <p>5 Sitting here right now, I can't.</p> <p>6 MR. HEGARTY: Okay. All</p> <p>7 right. Thank you.</p> <p>8 EXAMINATION</p> <p>9 DR. THOMPSON: Let me go ahead</p> <p>10 and mark one of the documents that you</p> <p>11 brought with you that was loose,</p> <p>12 Dr. Sage, and this is the "FDA Cosmetics</p> <p>13 Program: Current Projects and Resources</p> <p>14 and a Discussion of the 'Model' Program,</p> <p>15 FDA Cosmetics Mission Statement."</p> <p>16 (Document marked for</p> <p>17 identification as Sage Exhibit 28.)</p> <p>18 BY DR. THOMPSON:</p> <p>19 Q. Did you consider this document in</p> <p>20 forming -- relating the opinions that you gave</p> <p>21 today?</p> <p>22 A. Yes.</p> <p>23 Q. Is it confirmatory of the opinions</p> <p>24 that you provided in your report?</p> | <p>Page 426</p> <p>1 becomes available?</p> <p>2 A. I do reserve that right.</p> <p>3 Q. Would that include any review of</p> <p>4 defense expert reports in the regulatory area?</p> <p>5 A. Yes, certainly.</p> <p>6 DR. THOMPSON: No further</p> <p>7 questions.</p> <p>8 MR. HEGARTY: No further</p> <p>9 questions.</p> <p>10</p> <p>11 (Time noted: 5:33 p.m.)</p> <p>12</p> <p>13 * * *</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> |
| <p>1 A. Yes, it is.</p> <p>2 Q. And is it confirmatory of the</p> <p>3 opinions that you've offered here today as well?</p> <p>4 A. Yes.</p> <p>5 Q. You mentioned earlier that you</p> <p>6 looked at the Johnson & Johnson website that was</p> <p>7 Facts About Talc.</p> <p>8 And did that website include</p> <p>9 corporate documents?</p> <p>10 A. Yes.</p> <p>11 Q. And were those documents selected by</p> <p>12 Johnson & Johnson to include on the website?</p> <p>13 A. Yes.</p> <p>14 Q. Did you review the documents from</p> <p>15 that website?</p> <p>16 A. Yes, some of them. I don't recall</p> <p>17 how many there were but, yes.</p> <p>18 Q. And, Dr. Sage, were the opinions in</p> <p>19 your report and the opinions that you gave today</p> <p>20 given to a reasonable degree of scientific and</p> <p>21 professional certainty?</p> <p>22 A. Yes, they were.</p> <p>23 Q. And do you reserve the right to</p> <p>24 amend or supplement your report if new information</p> | <p>Page 427</p> <p>1 ERRATA SHEET</p> <p>2</p> <p>3 Page No. _____ Line No. _____ Change to: _____</p> <p>4 _____</p> <p>5 Page No. _____ Line No. _____ Change to: _____</p> <p>6 _____</p> <p>7 Page No. _____ Line No. _____ Change to: _____</p> <p>8 _____</p> <p>9 Page No. _____ Line No. _____ Change to: _____</p> <p>10 _____</p> <p>11 Page No. _____ Line No. _____ Change to: _____</p> <p>12 _____</p> <p>13 Page No. _____ Line No. _____ Change to: _____</p> <p>14 _____</p> <p>15 Page No. _____ Line No. _____ Change to: _____</p> <p>16 _____</p> <p>17 Page No. _____ Line No. _____ Change to: _____</p> <p>18 _____</p> <p>19 Page No. _____ Line No. _____ Change to: _____</p> <p>20 _____</p> <p>21 Page No. _____ Line No. _____ Change to: _____</p> <p>22 _____</p> <p>23 Page No. _____ Line No. _____ Change to: _____</p> <p>24 _____</p> |

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1 DECLARATION UNDER PENALTY OF PERJURY

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4 I declare under penalty of
5 perjury that I have read the entire transcript of
6 my Deposition taken in the captioned matter
7 or the same has been read to me, and
8 the same is true and accurate, save and
9 except for changes and/or corrections, if
10 any, as indicated by me on the DEPOSITION
11 ERRATA SHEET hereof, with the understanding
12 that I offer these changes as if still under
13 oath.

14

15 Signed on the _____ day of
16 _____, 2021.

17

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19 WILLIAM M. SAGE, MD, JD

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1 CERTIFICATE OF REPORTER
2 DISTRICT OF COLUMBIA)
3 I, DENISE DOBNER VICKERY, CRR/RMR and
4 Notary Public, hereby certify the witness was by
5 me first duly sworn to testify to the truth; that
6 the said deposition was recorded stenographically
7 by me and thereafter reduced to printing under my
8 direction; and that said deposition is a true
9 record of the testimony given by said witness.

10 I certify the inspection, reading and
11 signing of said deposition were NOT waived by
12 counsel for the respective parties and by the
13 witness; and that I am not a relative or employee
14 of any of the parties, or a relative or employee
15 of either counsel, and I am in no way interested
16 directly or indirectly in this action.

17

18

19

20

21 Denise Dobner Vickery, CRR/RMR
22 Notary Public in and for the
23 District of Columbia

24 My Commission expires: February 28, 2023